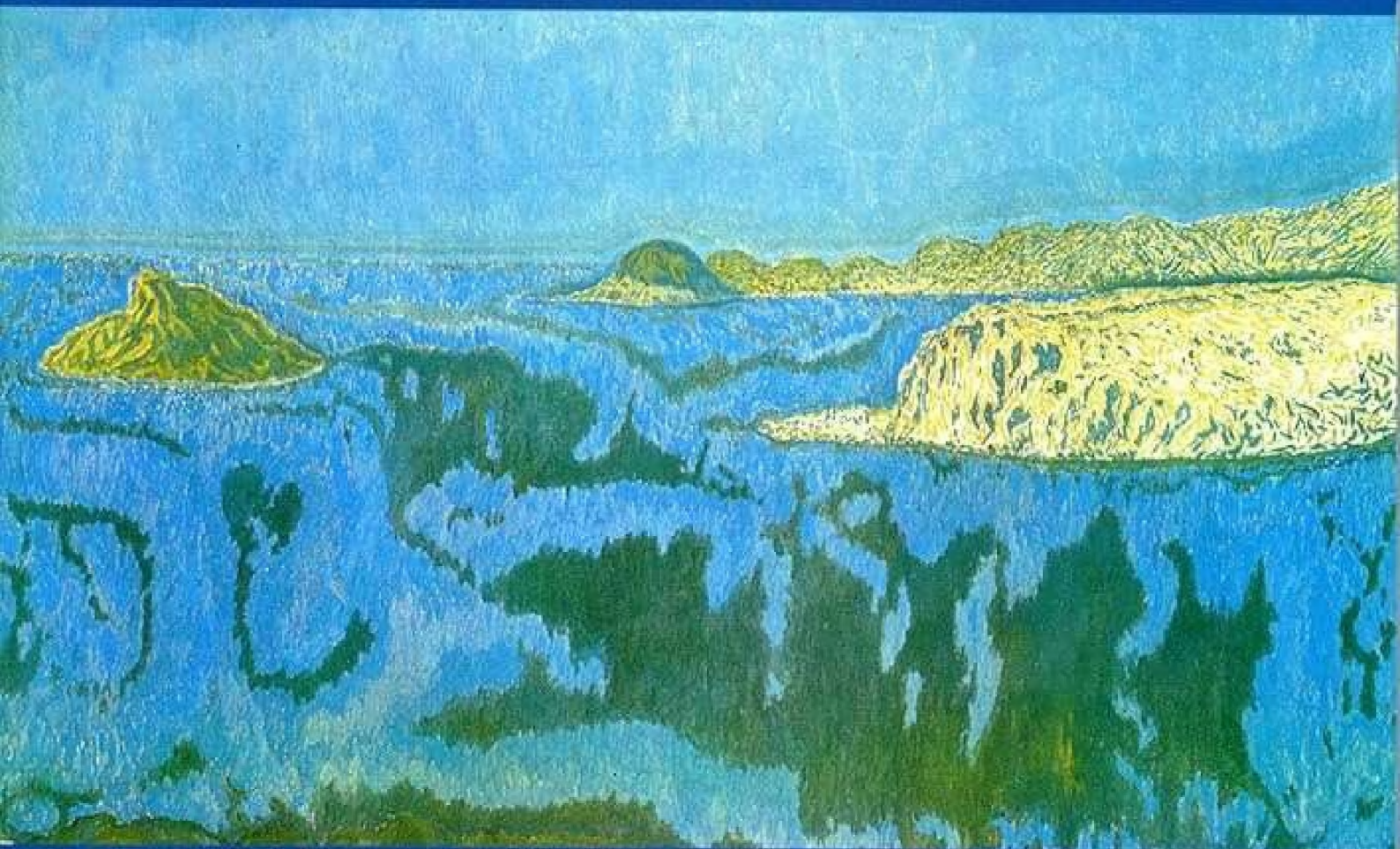


Angelos M. Syrigos

**THE STATUS OF THE AEGEAN SEA
ACCORDING TO INTERNATIONAL LAW**



SAKKOULAS / BRUYLANT

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στους γονείς μου
to my parents

Preface

This study is designed to focus attention upon the diplomatic relations between Greece and Turkey and their legal significance in the Aegean Sea dispute. It also aims to examine how the development of the international law of the sea influenced the arguments of the two countries in relation to their claims to the Aegean maritime zones.

The study is divided into three parts. Part I examines the period up to 1973 and the legal background of the future arguments raised by the two countries; Part II focuses on the period in which these arguments developed; and Part III examines recent developments in the international law of the sea as well as in the bilateral relations between Greece and Turkey after 1986. This chronological approach was preferred because the positions and views of the two countries follow closely, and were influenced by, the development of the international law of the sea.

Acknowledgments

This study was prepared under the supervision of Dr. Malcolm D. Evans to whom I am deeply indebted for his guidance and advice as well as for his ability to remain charitable after reading some very rough drafts. I want to thank my examiners Professor Patricia Birnie and Dr. Clive Symmons. During my research, I was fortunate in having the guidance of the Legal Advisers of the Greek Ministry of Foreign Affairs and especially Dr. Theodoros Hal-kiopoulos to whom I am grateful. I am also indebted to the officials of the Turkish Embassy in Athens, particularly to Mr. Alpazlan for the information provided, as well as to the Press Office of the Turkish Embassy in Athens for greatly reducing my exertions in collecting the materials necessary for this work by providing me with various Turkish official documents as well as copies of the *Official Turkish Gazette*.

My thanks are due to staff at all levels of the following institutions for their assistance over the years of research: Wills Memorial Library at the University of Bristol, Main Library at the University of Bristol, Bodleian Law Library at Oxford University, Squire Law Library at Cambridge University, the University of Cambridge Library, the Library of the Greek Parliament, the Institute of Advanced Legal Studies and the International Institute for Strategic Studies. I would like to thank Professor Constantine Economides, Dr. Anastassia Strati, Dr. Maria Gavouneli, Georgios Yangakis, journalists Nikos Marakis and Annie Podimata, Nikos Papakonstantinou of the Press and Information Office of the Greek Embassy in Ankara, the Research Centre for International Law of the University of Cambridge, the Hellenic Institute of International and Foreign Law, the Institute of International Relations (IDIS) and ELIAMEP for their assistance. I have also to extend my thanks to the First Vice President of the Military Court of Appeals and member of the board of Directors of the Society for the Military Law and the Law of War Athanassios Kossioris as well as to the Athens daily newspapers, Καθημερινή [Kathimerini], Ελευθεροτυπία [Eleftherotypia], Το Βήμα [To Vima], and to the weekly newspaper Ποντίκι [Pontiki] for letting me examine their archives. Many thanks are also due to the Hellenic Navy Hydrographic Service and more specifically to Admiral Alexandros Maratos and Dimitrios Dagres who

were very willing to help me and drew most of the maps which are attached in the present study.

Dr. Richard Lim was the person who encouraged me during the preparation of this work and spent a lot of his time correcting my drafts. Nickolas Augustinos, solicitor of both the Supreme Court of New South Wales, Australia, and of the Supreme Court of England, did the most boring job, that of correcting and proof-reading for the first time the entire manuscript. I will never forget his help. Also I would like to thank Anna Tsitoura, Effimia Panagiotidou and Nancy Gamvraki for their help and support.

During the final stage of the preparation of this work I have been helped a lot by Virginia Tsouderos and Theodoros Papalexopoulos to whom I am indebted. Also, I would like to thank Antonis Papayanides, Dr. Constantine Arvanitopoulos and Dr. Chrysanthos Lazarides. I am grateful for the help and support of Aristide Caratzas, the professional work of Susan Spencer and for the courtesy of the people of the "Sakkoulas" publishing house. Last but not least I have to thank the Citizens Movement and the A.G. Leventis Foundation for their financial support for the publication of this work.

I owe much to my sister Heliachtida whose support made my study not only possible but enjoyable. Finally, there are always some people without whom, it is fair to say, this work would not have been done. In this case, they are Matheos and Demetra Syrigos, my parents. As a small token of gratitude, I would like to dedicate this study to them.

Foreword

Of the many international disputes which rise from time to time, few seem to the lay observer more irrational and intractable as that concerning the Aegean Sea. How is it that two NATO allies often seem to be more at odds with each other than with anyone else? How is it that a salvage operation can swiftly lead to threats of war, that the sovereignty of insular formations, unremarked upon for decades, suddenly assumes momentous significance? Beyond all these issues lie other, more fundamental, questions: What does international law have to say on these issues and how is it that after so many years of disputation a solution to these problems seems as far away as ever?

Any book which seeks to "solve" the problems concerning the Aegean Sea is destined to disappoint. If there were an easy answer it would have been found by now. What is called for is the patient and careful unravelling and exposition of the factors which feed into the situation, in the hope that shedding more light upon the nature of the debates will both influence their direction and assist in the progress towards a resolution. This book seeks to both chronicle and form a part of such a process.

The origins of this book lie in a doctoral thesis which examined the extent to which the changing language of the law surrounding the delimitation of maritime zone, and particularly of the continental shelf, influenced and was reflected in the diplomacy of both Greece and Turkey. This was achieved by a careful exposition of the relevant legal developments, highlighting its traces in the diplomatic maneuvering and exchanges which have taken place during the last twenty-five years. Of course, this can only be a part of a complex equation. Even if the delimitation of the Aegean continental shelf provided the "flashpoint", this in itself was conditioned by a whole host of other factors. Similarly, a wide range of other questions which bear directly or indirectly, or do not really bear at all upon the actual issues relevant for delimitation, have become enmeshed in the dispute. Indeed, the dispute over the Aegean Sea has itself become associated and intertwined with other equally problematic issues, for example concerning Cyprus, and, more recently, human rights and the relationship between Turkey and the European Union. It is

no longer possible, if it ever was, to separate the dominant from the secondary strands in the complex web of competing interacting issues.

This book combines detailed research of diplomatic material with some sophisticated legal analysis. This is presented against the background of the ongoing search for a solution to a problem, the very nature of which is itself a matter of dispute. It seeks to follow the contours of contention. Doubtless, not all will share in all of the conclusions drawn, but that is only to be expected. At the end of the day, it is likely that any solution will depend upon both parties "reassessing" their understanding of certain elements of the dispute and it may be that it will be difficult to pinpoint exactly which elements of any "solution" are truly the outcome of a rigorous application of the relevant legal criteria and which reflect a judicious blurring of debatable points. But that is the task of tomorrow's analysts. The task of today's analysts is to continue to probe and present the dispute in order to facilitate the task of settlement upon whatever basis proves ultimately appropriate.

What is incontestable is that settlement, when it comes, will be couched in the language of international law and be based upon an interpretation and application of it. International law provides both the medium and modalities of settlement. In this work, Dr. Syrigos demonstrates the manner in which international law has already fed into—and, indeed, been fed by—the Aegean Sea dispute. Even if we cannot predict the next turn of events, we know where to look for the tools with which it is to be handled.

Dr. Malcolm D. Evans, University of Bristol

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Abbreviations

AD	<i>Annual Digest and Reports of Public International Law Cases</i>
AdVölk	<i>Archiv des Völkerrechts</i>
AFDI	<i>Annuaire Français de Droit International</i>
AJIL	<i>American Journal of International Law</i>
ANA	Athens News Agency
ASIL Proc.	Proceedings of the American Society of International Law
Balk.St.	<i>Balkan Studies</i>
BBC-SWB	<i>British Broadcasting Corporation-Summary World Broadcasts</i>
BFSP	<i>British and Foreign State Papers</i>
Bul.EurCom	<i>Bulletin of the European Communities</i>
BYBIL	<i>British Yearbook of International Law</i>
CaseW.Res.J.Int.L	<i>Case Western Reserve Journal of International Law</i>
CBR	<i>Canadian Bar Review</i>
CHist	<i>Current History</i>
CLeg.Pr.	<i>Current Legal Problems</i>
CLJ	Cambridge Law Journal
Con.ICAO	Chicago Convention on International Civil Aviation
CRev	<i>Contemporary Review</i>
CSCE	Conference on Security and Cooperation in Europe
CTS	<i>Consolidated Treaty Series</i>
CYBIL	<i>Canadian Yearbook of International Law</i>
CWILJ	<i>California Western International Law Journal</i>
DDDP	<i>Διεθνές Δίκαιο και Διεθνής Πολιτική [Diethnes Dikeo ke Diethnis Politiki]</i>
EA	<i>Europa-Archiv</i>

EDDDE	<i>Επιθεώρησης Δημοσίου Δικαίου και Διοικητικής Επιστήμης</i> [<i>Epitheorisis Dimosiou Dikeou ke Diikitikis Epistimis</i>]
EEN	<i>Εφημερίς Ελλήνων Νομικών</i> [<i>Ephimeris Hellinon Nomikon</i>]
EEZ	Exclusive Economic Zone
EFZ	Exclusive Fishery Zone
ΕτΚ	<i>Εφημερίς της Κυβερνήσεως</i> [<i>Official Gazette of the Government</i>] (Greece)
FBJ	<i>Federal Bar Journal</i>
FIR	Flight Information Region
FOCP	<i>Foreign Office Confidential Print</i>
Geog.Rev.	<i>Geographical Review</i>
Geor.JICL	<i>Georgia Journal of International and Comparative Law</i>
HJIL	<i>Harvard Journal of International Law</i>
HMSO	Her Majesty's Stationery Office
HRIL	<i>Revue Hellénique de Droit International</i>
HRIRel	<i>Hellenic Review of International Relations</i>
IBL	<i>International Business Lawyer</i>
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICJ Reports	International Court of Justice Reports
ICLQ	<i>International and Comparative Law Quarterly</i>
IJIL	<i>Indian Journal of International Law</i>
IJourMCL	<i>International Journal of Marine and Coastal Law</i>
ILA	International Law Association
ILC	International Law Commission
ILM	<i>International Legal Materials</i>
ILR	<i>International Law Reports</i>
IMCO	Inter-Governmental Maritime Consultative Organization
IMLC	<i>International Maritime Law Conventions</i>
IMO	International Maritime Organization
InLaw	<i>International Lawyer</i>
Int.Arb.	<i>History and Digest of the International Arbitrations to Which the U.S. Has Been a Party</i> , J.B. Moore

JACL	<i>Journal of Air and Commerce Law</i>
JapAIL	<i>Japanese Annual of International Law</i>
JDI	<i>Journal du Droit International</i>
JHD	<i>Journal of the Hellenic Diaspora</i>
JMGS	<i>Journal of Modern Greek Studies</i>
Limits in the Seas	<i>Limits in the Seas</i> , United States Department of State, Bureau of Intelligence and Research
LJIL	<i>Leiden Journal of International Law</i>
LNTS	<i>League of Nations Treaty Series</i>
LOSC	<i>Law of the Sea Convention</i> , 1982
Md.J.Int'l.LTr	<i>Maryland Journal of International Law and Trade</i>
MES	<i>Middle Eastern Studies</i>
MLR	<i>Maine Law Review</i>
Mod.LR	<i>Modern Law Review</i>
MP	<i>Marine Policy</i>
M.Pol.M.	<i>Maritime Policy and Management</i>
NG	<i>Negotiating Group at UNCLOS III</i>
NOTAM	<i>Notice to Airmen</i>
NTIR	<i>Nordisk Tidsskrift for International Ret</i>
NYIL	<i>Netherlands Yearbook of International Law</i>
ODIL	<i>Ocean Development and International Law</i>
OfTuGaz	<i>Official Turkish Gazette</i>
Oppenheim	<i>Oppenheim's International Law</i> , 9th ed., 1992
PCIJ	<i>Permanent Court of International Justice</i>
RBelDI	<i>Revue Belge de Droit International</i>
Rec.Doc.Conf.Paix1946	<i>Recueil des documents de la Conférence de la Paix</i> , Paris, 1946, Vol. I, II, III, IV
REDI	<i>Revista Espanola de Derecho Internacional</i>
RGDIP	<i>Revue Générale de Droit International Public</i>
RGDott.	<i>Revue Générale de Droit (Ottawa)</i>
RevPI	<i>Revue Politique Internationale</i>
RIAA	<i>United Nations Reports of International Arbitral Awards</i>
RIRI	<i>Revue Iranienne des Relations Internationales</i>
SACEUR	<i>Senior Allied Commander of the European Forces</i>
SDLR	<i>San Diego Law Review</i>

SLR	<i>Stanford Law Review</i>
SOLAR	International Convention for Safety of Life at Sea
Strupp	<i>La situation internationale de la Grèce 1821-1917</i> , Recueil de documents, Strupp, C.
StudDipl	<i>Studia Diplomatica</i>
TDAD	Türk Dünyası Arastirmalari Dergisi
TDN	<i>Turkish Daily News</i>
Th.Ac.	<i>Thesaurus Acroasium</i>
TPAO	Turkish Petroleum Company
TRQD	<i>Turkish Review Quarterly Digest</i>
TYBIR	<i>Turkish Yearbook of International Relations</i>
UKMIL	<i>United Kingdom Materials on International Law</i> , (in <i>British Yearbook of International Law</i>)
UKTS	<i>United Kingdom Treaty Series</i>
UNCLOS I	First United Nations Conference on the Law of the Sea
UNCLOS II	Second United Nations Conference on the Law of the Sea
UNCLOS III	Third United Nations Conference on the Law of the Sea
UNCLOS III, Off.Rec.	Official Records, Third United Nations Conference on the Law of the Sea
UNLSer.	<i>United Nations Legislative Series</i>
VJIL	<i>Virginia Journal of International Law</i>
YBILC	<i>Yearbook of the International Law Commission</i>
YBWA	<i>Yearbook of World Affairs</i>

Cases and Sources

Cases

- *Aegean Sea Continental Shelf*, (Greece v. Turkey), Interim Protection, *ICJ Reports*, 1976, p.3.
- *Aegean Sea Continental Shelf*, (Greece v. Turkey), Judgment, *ICJ Reports*, 1978, p.3.
- *Aerial Incident of 27 July 1955*, (Israel v. Bulgaria), Judgment, *ICJ Reports*, 1959, p.127.
- *Anglo-French Case. Channel Continental Shelf Arbitration*, (United Kingdom v. France), HMSO, Misc. No. 15 (1978), Cmnd.7348.
- *Anglo-Iranian Oil Co.*, (United Kingdom v. Iran), Interim Protection, *ICJ Reports*, 1951, p.89.
- *Anna, The*, 1805, *English Reports Reprint 1220-1829*, 165, p.809.
- *Appeal from a Judgment of the Hungaro-Czechoslovak Mixed Arbitral Tribunal*, (The Peter Pazmany University v. the State of Czechoslovakia), (Czechoslovakia v. Hungary), Judgment, *PCIJ Series A/B*, No. 61, 1933, p.208.
- *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, Advisory Opinion, *ICJ Reports*, 1988, p.12.
- *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case Concerning the Continental Shelf*, (Tunisia v. Libyan Arab Jamahiriya), Judgment, *ICJ Reports*, 1985, p.192.
- *Barcelona Traction, Light and Power. Company, Limited*, Preliminary Objections, Judgment, Second Phase, *ICJ Reports*, 1970, p.3.
- *Case Concerning the Arbitral Award of 31 July 1989*, (Guinea-Bissau v. Senegal), *ICJ Reports*, 1991, p.53.
- *Case of German Repatriations under Article 260 of the Peace Treaty of Versailles*, 1924, *International Arbitral Awards*, Vol. 1, p.429.
- *Certain Expenses of the United Nations*, Advisory Opinion, *ICJ Reports*, 1962, p.152.
- *Certain German Interests in Polish Upper Silesia*, (Germany v. Poland), Judgment, *PCIJ Series A*, No.6, 1925.

- *Certain German Interests in Polish Upper Silesia*, (Germany v. Poland), Merits, *PCIJ Series A*, No.7, 1926.
- *Clipperton Island Arbitration*, (Mexico/France), *International Law Reports*, Vol. 6, p.105.
- *Commission of the European Atomic Energy Community v. United Kingdom Atomic Energy Authority*, Hambro, Sole Arbitrator, 25 February 1967, *International Law Reports*, 44, 1972, p.409.
- *Competence of the General Assembly for the Admission of a State to the United Nations*, Advisory Opinion, *ICJ Reports*, 1950, p.4.
- *Conditions of Admission of a State to Membership to the United Nations*, Advisory Opinion, *ICJ Reports*, 1947-48, p.53.
- *Continental Shelf*, (Libyan Arab Jamahiriya/Malta), [Libya/Malta], Judgment, *ICJ Reports*, 1985, p.3.
- *Continental Shelf*, (Tunisia/Libyan Arab Jamahiriya), [Tunisia-Libya], Judgment, *ICJ Reports*, 1982, p.18.
- *Continental Shelf Area between Iceland and Jan Mayen*, Report and the Recommendations of the Conciliation Commission to the Governments of Iceland and Norway, *International Legal Materials*, Vol.XX, May 1981, p.797.
- *Customs Regime between Germany and Austria*, Advisory Opinion, *PCIJ Series A/B*, No. 41, 1931, p.37.
- *Delimitation of Maritime Areas between Canada and the French Republic*, Arbitration, 10 June 1992.
- *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, (Canada/United States of America), Judgment, *ICJ Reports*, 1984, p.246.
- *Delimitation of the Territorial Waters between the Island of Castelorizo and the Coasts of Anatolia*, (Italy-Turkey), Special Agreement, *PCIJ Series C*, No. 60, 1929, *World Court Reports*, Vol. III, 1932-1935, p.117
- *Delimitation of the Territorial Waters between the Island of Castelorizo and the Coasts of Anatolia*, (Italy-Turkey), Order, *PCIJ Series A/B*, No. 51, 1933, pp. 4-6.
- *Denunciation of the Treaty of 2 November 1865 between China and Belgium*, (Belgium v. China), Orders, *PCIJ Series A*, No.8, 1927.
- *Diversion of the Waters of the River Meuse*, (Netherlands v. Belgium), Judgment, *PCIJ Series A/B*, No. 70, 1937, p.4.
- *Dubai - Sharjah Border Arbitration*, 19 October 1981, *International Law Reports*, Vol. 91, p.543.

- *Electricity Company of Sofia and Bulgaria*, (Belgium v. Bulgaria), Order, *PCIJ Series A/B*, No. 79, 1939, p.194.
- *Fisheries*, (United Kingdom v. Norway), [*Anglo-Norwegian Fisheries*], Judgment, *ICJ Reports*, 1951, p.116.
- *Fisheries Jurisdiction*, (Federal Republic of Germany v. Iceland), Jurisdiction of the Court, Judgment, *ICJ Reports*, 1973, p.48.
- *Fisheries Jurisdiction*, (Federal Republic of Germany v. Iceland), Merits, Judgment, *ICJ Reports*, 1974, p.175.
- *Fisheries Jurisdiction*, (United Kingdom v. Iceland), Jurisdiction of the Court, Judgment, *ICJ Reports*, 1973, p.3.
- *Fisheries Jurisdiction*, (United Kingdom v. Iceland), Jurisdiction of the Court, Judgment, *ICJ Reports*, 1973, p.48.
- *Fisheries Jurisdiction*, (United Kingdom v. Iceland; Federal Republic of Germany v. Iceland), Interim Protection, *ICJ Reports*, 1972, p.12.
- *Free Zones of Upper Savoy and the District of Gex*, (France/Switzerland), Order, *PCIJ Series A*, No. 22, 1929.
- *Free Zones of Upper Savoy and the District of Gex*, (France/Switzerland), Judgment, *PCIJ Series A/B*, No. 46, 1932, p.96.
- *Frontier Dispute*, (Burkina Faso/Republic of Mali), *ICJ Reports*, 1986, p.525.
- *Government of Kuwait v. American Independent Oil Company (Aminoil)*, Arbitration, 24 March 1982, *International Law Reports*, Vol. 66, 1984, p.519.
- *Guinea/Guinea-Bissau Maritime Delimitation Case*, 14 February 1985, *International Legal Materials*, Vol. 77, pp.636-692.
- *Haya de la Torre*, (Colombia-Peru), Judgment, *ICJ Reports*, 1951, p.71.
- *Interhandel*, (Switzerland v. United States of America), Judgment, *ICJ Reports*, 1959, p.6.
- *Interpretation of Article 3, Paragraph 2 of the Treaty of Lausanne*, (Frontier between Turkey and Iraq), (Turkey and Great Britain), Advisory Opinion, *PCIJ Series B*, No. 12, 1925.
- *Interpretation of Peace Treaties*, 2nd Phase, Advisory Opinion, *ICJ Reports*, 1950, p.221.
- *Island of Palmas*, Arbitration, 1928, *United Nations Reports of International Arbitral Awards*, Vol. 2, p. 839.
- *Jurisdiction of the Court of Danzig (Pecuniary Claims of Danzig Railway Officials Transferred to the Polish Service)*, Advisory Opinion, *PCIJ Series B*, No. 15, 1928.

- *Lake Lanoux*, Arbitration, (France v. Spain), 1957, *International Law Reports*, 1961.
- *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, *ICJ Reports*, 1971, p.16.
- *Legal Status of the South-Eastern Territory of Greenland*, Order, Interim Protection, (Norway v. Denmark; Denmark v. Norway), *PCIJ Series A/B*, No. 48, 1932, p.268.
- *Legal Status of the South-Eastern Territory of Greenland*, Judgment, (Norway v. Denmark; Denmark v. Norway), *PCIJ Series A/B*, No. 53, 1933, p.46.
- *Lighthouses Case*, (France/Greece), *PCIJ Series A/B*, No. 62, 1934, p.4.
- *Lighthouses in Crete and Samos*, (France v. Greece), *PCIJ Series A/B*, No. 71, 1937, p.94.
- *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, (Qatar v. Bahrain), *ICJ Reports*, 1 July 1994.
- *Maritime Delimitation in the Area between Greenland and Jan Mayen*, (Denmark v. Norway), *ICJ Reports*, 14 June 1993.
- *Mavromatis Jerusalem Concessions*, (Greece v. Great Britain), Judgment, *PCIJ Series A*, No. 5, 1925.
- *Mavromatis Palestine Concessions*, (Greece v. Great Britain), Judgment, *PCIJ Series A*, No. 2, 1924.
- *Meerauge Arbitration*, (Austria/Hungary), 1902, *Revue Generale de Droit International Public*, Vol. 38, 1906, p.207.
- *Military and Paramilitary Activities In and Against Nicaragua*, (Nicaragua v. United States of America), Jurisdiction of the Court and Admissibility of the Application, *ICJ Reports*, 1984, p.392.
- *Minquiers and Ecrehos*, (France/United Kingdom), *ICJ Reports*, 1953.
- *Montijo, The*, (Colombia/U.S.), 1875, in *History and Digest of the International Arbitrations to which the U.S. has been a Party*, by Moore, J.B., 2nd Volume, Washington, 1898, p.1421.
- *North Sea Continental Shelf Cases*, (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, *ICJ Reports*, 1969, p.3.
- *Nuclear Tests Case*, (Australia v. France; New Zealand v. France), Judgment, *ICJ Reports*, 1974, p.253, 457.

- *Pablo Najeve* (of the Lebanon) Case, French-Mexican Mixed Claims Commission decided on 19 October 1928, *Annual Digest and Reports of Public International Law Cases*, Vol. 4, 1927-28, No. 206.
- *Passage through the Great Belt, Request for the Indication of Provisional Measures*, (Finland v. Denmark), Order, *ICJ Reports*, 1991, p.12.
- *Petroleum Development v. the Sheikh of Abu Dhabi*, 1951, *International Law Reports*, 1957, p.144.
- *Polish Postal Service in Danzig*, Advisory Opinion, *PCIJ Series B*, No. 11, 1925, p.39.
- *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie*, (Libyan Arab Jamahiriya v. United Kingdom), *ICJ Reports*, 1992.
- *Railway Traffic between Lithuania and Poland*, (Railway Sector Land-warow-Kaisiadorys), (Lithuania, Poland Advisory and Technical Committee for Communications and Transit), Advisory Opinion, *PCIJ Series A/B*, No. 42, 1931, p.108.
- *Rainbow Warrior Ruling*, *International Law Reports*, Vol. 74, p.241.
- *Rights of United States Nationals in Morocco*, *ICJ Reports*, 1952, p.176.
- *South West Africa Cases, Preliminary Objections*, (Ethiopia v. South Africa; Liberia v. South Africa), Judgment, *ICJ Reports*, 1962, p.319.
- *SS Lotus*, (France/Turkey), Judgment, *PCIJ Series A*, No. 10, 1927.
- *SS Wimbledon*, (Great Britain, France, Italy, Japan, Poland [intervenor] v. Germany), Judgment, *PCIJ Series A*, No. 1, 1923.
- *Temple of Preah Vihear*, (Cambodia v. Thailand), Preliminary Objections, Judgment, *ICJ Reports*, 1961, p.52.
- *Tribunal Arbitral pour la Determination de la Frontiere Maritime, Guinee-Bissau/ Senegal, Sentence du 31 Juillet 1989*, *RGDIP*, 1990, pp. 204-277.
- *United States Diplomatic and Consular Staff in Tehran*, (United States of America v. Iran), *ICJ Reports*, 1980, p.4.

Treaties

- Agreement between the Government of the Republic of Turkey and the Government of the Union of Soviet Socialist Republics on the Delimitation of the Continental Shelf between the Republic of Turkey and the Union of Soviet Socialist Republics in the Black Sea, 23 June 1978, translated by the U.S. Department of State from the text published in the *Official*

Turkish Gazette, Issue No. 17226, 20 January 1981, *Limits in the Seas*, Continental Shelf Boundary: Turkey-USSR, No. 109.

- Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Reciprocal Advance Notification of Major Strategic Exercises, Jackson Hole, Wyoming, 1989, *International Legal Materials*, Vol. 28, p.1436.
- Agreement between the Italian Republic and the Hellenic Republic on the Delimitation of Zones of the Continental Shelf Belonging to Each of the Two States, *Limits in the Seas*, No. 96.
- Agreement between Italy and Greece, [Venizelos-Bonin Agreement], 10 August 1920, Frangoulis, *La Grece, son status international, son histoire diplomatique*, Paris, 1933, Vol. 2, p. 109.
- Antarctic Treaty, 1 December 1959, *United Nations Treaty Series*, Vol. 402, p. 71.
- Chicago Convention on International Civil Aviation, 1944, *United Kingdom Treaty Series*, 1953, No. 8.
- Convention for the Delimitation of the Territorial Waters between the Coasts of Anatolia and the Island of Castellorizo, 4 January 1932, *League of Nations Treaty Series*, Vol. 138, p. 243.
- Convention on Commercial Aviation, Havana, 20 February 1928, *American Journal of International Law*, 1928, Vol. 22, suppl. pp.124-133.
- Convention Regarding the Regime of Straits, Montreux, 20 July 1936, *League of Nations Treaty Series*, Vol. 173, p. 215.
- Exchange of Notes between Austria-Hungary, France, Germany, Great Britain, Italy and Russia and the Ottoman Empire Respecting the Aegean Islands, Constantinople, 14/15 February 1914, *Consolidated Treaty Series*, Vol. 219, Oceana Publications, 1980, p. 287.
- Exchange of Notes between the Government of the United Kingdom and the Royal Hellenic Government Concerning the Transfer of the Responsibility for the Administration of the Dodecanese Islands, Athens, 31 March and 7 April 1947, *United Nations Treaty Series*, Vol. 201, p. 201.
- Geneva Conventions on the Law of the Sea, *United Nations Treaty Series*, Vol. 499, p. 311.
- Greek Memorandum, 29 January 1923, in Booth, I.B., *Italy's Aegean Possessions*, London, 1928, p. 310.
- Greek Reply to the 14/15 February 1914 Note of Austria-Hungary, France, Germany, Great Britain, Italy and Russia Respecting the Aegean Islands, Athens, 8/21 February 1914, *La situation internationale de la*

Grèce 1821-1917, Recueil de Documents, Strupp, C., Die Verbindung, Zurich.

- International Convention for Safety of Life at Sea, 1960, Annex to the Final Act of the Fourth Conference of IMCO, London, *Conventions Maritimes Internationales*, p. 327.
- International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, *International Maritime Law Conventions*, Vol. 2, p. 1671.
- Memorandum on the Registration and Publication of Treaties as Prescribed under Article 18 of the Covenant of the League of Nations, Council of the League of Nations, Rome, 19 May 1920, *League of Nations Treaty Series*, Vol. 1, p. 8.
- North Sea Fisheries Convention, 1882, *British and Foreign State Papers*, Vol. 73, p. 39.
- Pact of Balkan Entente between Greece, Roumania, Turkey and Yugoslavia, Athens, 9 February 1934, *League of Nations Treaty Series*, Vol. 153, p. 155.
- Paris Convention for the Regulation of Aerial Navigation, 1919, *United Kingdom Treaty Series*, 1922, No. 2.
- *Procès-Verbal* between Italy and Turkey, Ankara, 28 December 1932, a photocopy of the original document bearing the signatures of the representatives of the two states was kindly offered by the Special Legal Department of the Greek Ministry of Foreign Affairs.
- Protocol between the Government of the Union of Soviet Socialist Republics and the Government of the Republic of Turkey Concerning the Establishment of the Maritime Boundary between Soviet and Turkish Territorial Waters in the Black Sea, 17 April 1973, translated by the U.S. Department of State from the text published in the *Official Turkish Gazette*, Issue No. 17749, 9 July 1982, *Limits in the Seas*, Territorial Sea Boundary: Soviet Union-Turkey, No. 59.
- Protocol on Settlement of Canada's Claim for Damages Caused by "Cosmos 954," Canada-Union of Soviet Socialist Republics, 2 April 1981, *International Legal Materials*, Vol. 20, 1981, pp. 689-695.
- Provisional Treaty of Peace between Italy and Turkey, Ouchy, Lausanne, 15 October 1912, *Consolidated Treaty Series*, Vol. 217, Oceana Publications, 1980, p. 137.
- Secret Arrangement Concerning the Island of Rhodes, [Venizelos-Tittoni Arrangement], Paris, 29-7-1919, Frangoulis, *Dictionnaire Diplomatique*, Paris, 1933, Vol. I, p. 739.

- Secret Agreement Respecting the Eastern Mediterranean and the Balkans between Greece and Italy [Venizelos-Tittoni Agreement], Paris, 29 July 1919, *Consolidated Treaty Series*, Vol. 225, Oceana Publications, 1981, p. 442.
- Secret Treaty Between the Allied and Associated Powers and Italy, London, 26 April 1915, Albrecht-Carrie, *Italy at the Peace Conference*, pp. 334-339.
- Treaties of Peace with Italy, Bulgaria, Hungary, Romania and Finland, Paris, 10 February 1947, *United Nations Treaty Series*, Vol. 49, I, No. 747.
- Treaty of Friendship, Neutrality, Conciliation and Arbitration between Greece and Turkey, Ankara, 30 October 1930, *League of Nations Treaty Series*, Vol. 125, p. 9.
- Treaty of Peace, Lausanne, 24 July 1923, *League of Nations Treaty Series*, Vol. 28, p. 12.
- Treaty of Peace between Bulgaria, Greece, Montenegro, Serbia and Turkey, London, 30 May 1913, *British and Foreign State Papers*, Vol. 107, (1914), p. 656.
- Treaty of Peace between Greece and Turkey, Athens, 1-14 November 1913, *La situation internationale de la Grèce 1821-1917*, Recueil de documents, Strupp, C., Die Verbindung, Zurich, p. 232.
- Treaty of Peace between the Allied and Associated Powers and Germany, Versailles, 28 June 1919, *The Treaty of Versailles—Annotations of the Text of the Treaty*, Greenwood Press, New York, 1968.
- Treaty of Peace between the Allied and Associated Powers and Turkey, Sevres, 10 August 1920, *British and Foreign State Papers*, Vol. 113, (1920), p. 471.
- Treaty of Perpetual Peace and Amity between Russia and Turkey, Kucuk Kainarca (Kucuk Kainardji), 10 (21) July 1774, *Consolidated Treaty Series*, Vol. 45, Oceana Publications, 1969, p. 442.
- Treaty of Rapalo, Italy, and the Serb-Croat, Slovene State, Rome, 12 November 1920, *LNTS*, 18, p. 388.
- UNESCO Convention for the Protection of the World Cultural and Natural Heritage, 16 November 1972, *International Legal Materials*, Vol. 11, pp. 1358-1366.
- Vienna Convention on the Law of Treaties, Vienna, 1969, *International Legal Materials*, Vol. 8, p. 679.

Pleadings

- ICJ Pleadings*, Oral Arguments, Documents, (1953), *The Minquiers and Ecrehos Case*, (France/United Kingdom), Vol. II.
- ICJ Pleadings*, Oral Arguments, Documents, (1969), *The North Sea Continental Shelf Cases*, (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Vols. I-II.
- ICJ Pleadings*, Oral Arguments, Documents, (1980), *Aegean Sea Continental Shelf Case* (Greece v. Turkey).
- ICJ Pleadings*, Oral Arguments, Documents, (1982), *Case Concerning the Continental Shelf* (Tunisia/Libya), Vols. I-VI.
- ICJ Pleadings*, Oral Arguments, Documents, (1989), *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, Vols. I-VIII.
- ICJ Pleadings*, Oral Arguments, Documents, (1989), *Case Concerning the Continental Shelf* (Libya/Malta), Vols. I-VII.
- Court of Arbitration, *Dispute over the Delimitation of the Maritime Areas between Canada and France*,
 Memorandum Submitted by the Government of the French Republic,
 May 1990 (English Translation).
 Memorial Submitted by Canada, 1 June 1990.
 Counter-Memorial Submitted by the Government of the French Republic,
 January 1991 (English Translation).
 Counter-Memorial Submitted by Canada, 1 February 1991.
 Oral Arguments, 1991.
- ICJ Case Concerning Maritime Delimitation in the Area between Greenland and Jan Mayen*, (Denmark/Norway),
 Memorial Submitted by the Government of the Kingdom of Denmark,
 Vol. I, July 1989.
 Rejoinder Submitted by the Government of the Kingdom of Norway,
 27 September 1991.
 Reply Submitted by the Government of the Kingdom of Denmark, Vol.
 I, January 1991.
 Counter-Memorial Submitted by the Government of the Kingdom of
 Norway, Vol. I, 11 May 1990.

Sources

Acts of the Hague Conference 1930

British and Foreign State Papers

British Document of the Lausanne Treaty, Cmnd. 1929 of 1923

Collection of Documents of the Paris Conference, 1946, Palais du Luxembourg, Vols. I, II, III, IV

Congressional Record, Vol. 59

Digest of U.S. Practice in International Law, 1975

Δωδεκάνησος—Η Μακρά Πορεία προς την Ενσωμάτωση—Διπλωματικά Έγγραφα από το Αρχείο του Υπουργείου των Εξωτερικών [*Dodecanese Islands—The Long Way to the Incorporation—Diplomatic Documents from the Archives of the Ministry of Foreign Affairs*], Kastaniotis, Greek Ministry of Foreign Affairs, Athens, 1996

Εφημερίς της Κυβερνήσεως, [*Official Gazette of the Government*], (Greece)

Expression of Consent of States to be Bound by a Treaty, Council of Europe, Section des publications, Directorate of Legal Affairs, Strasbourg, 1987

ICAO Reports

I Documento Diplomatici Italiani, Rome 1952

International Commission for Air Navigation, Extraordinary Session of June 1929, draft minutes

League of Nations Documents, C.74, M. 39, 1929

Letter of the Turkish Foreign Minister Tecfik Rustu Aras Bey addressed to the Italian Ambassador Vincenzo Lojacono, dated 3 January 1933, (unpublished)

Letter of the Italian Ambassador Vincenzo Lojacono addressed to the Turkish Foreign Minister Mr. Rustu Aras, dated 27 June 1933, (unpublished)

Letter of the Turkish Foreign Minister Rustu Aras addressed to the Italian Ambassador Carlo Galli, dated 20 November 1935, (unpublished)

Letter of the Italian Ambassador Carlo Galli addressed to the Turkish Foreign Minister Mr. Rustu Aras, dated 12 February 1936, (unpublished)

Letter of the Secretary General of the Turkish Ministry of Foreign Affairs Mr. Human Menemencioglu addressed to the Italian Ambassador Carlo Galli, dated 26 September 1936, (unpublished)

Letter of the Italian Ambassador Carlo Galli addressed to the Secretary General of the Turkish Ministry of Foreign Affairs Mr. Human Menemencioglu, dated 28 November 1936, (unpublished)

Limits in the Seas, United States Department of State, Bureau of Intelligence and Research

Official Journal of the European Communities

Official Journal of the League of Nations, 1921, 1922

Papers Relating to the Foreign Relations of the U.S., 1918, Sup.1, I, reproduced in the *American Journal of International Law*, Vol. 13, 1919, p.161

Parliamentary Papers, Great Britain, 1923, Turkey, No.1, Cmnd. 1814.
 "Lausanne Conference on Near Eastern Affairs, 1922-1923," (Proceedings), London, 1923

Πρακτικά Ελληνικού Κοινοβουλίου [*Minutes of the Greek parliament*]

Records of the First Assembly of the League of Nations

Records of the Second Assembly of the League of Nations

Recueil des Actes de la Conférence de la Paix, Paris

Report of the Third European-Mediterranean Regional Air Navigation Meeting, Paris, February-March 1952, ICAO, Doc. 7280, EUM III; Council of ICAO, 23 June 1952.

Report of the Fourth European-Mediterranean Regional Air Navigation Meeting, Geneva, 28 January-21 February 1958, ICAO, Doc. 7880, EUM/IV; Council of ICAO, 15 May 1958

"Report of the Legal, Commercial and Financial Sub-Commission to the Aeronautical Commission," *Recueil des Actes de la Conférence de la Paix*, Paris, Part VII, A (1), Aeronautical Commission

Supplement to the American Journal of International Law, Vol. 23, Special Number, April 1929, Draft Conventions and Comments on Territorial Waters prepared by the Research in International Law of the Harvard Law School

United Kingdom Treaty Series

United Nations and Related Sources

United Nations, Legislative Series

Laws and Regulations on the Regime of the High Seas, Vol. I, ST/LEG.SER.B/1, 1951

Laws and Regulations on the Regime of the High Seas, Vol. II, ST/LEG.SER.B/2, 1952

Laws and Regulations on the Regime of the High Seas, ST/LEG.SER.B/6, 1957

Multilateral Treaties in Respect of which the Secretary General Performs Depositary Functions, ST/LEG/SER.D/10

National Legislation and Treaties Relating to the Territorial Sea, the Contiguous Zone, the Continental Shelf, the High Seas, and to Fishing and Conservation of the Living Resources of the Sea, ST/LEG.SER.B/15, 1970

National Legislation and Treaties Relating to the Law of the Sea, ST/LEG.SER.B/16, 1974; SER.B/18, 1976; SER.B/19, 1980

National Legislation and Treaties Relating to the Territorial Sea, Contiguous Zone, the Continental Shelf, the High Seas and Fishing, and Conservation of the Living Resources of the Sea, Office for Ocean Affairs and the Law of the Sea, United Nations, 1982

National Legislation on the Territorial Sea, the Right of Innocent Passage and Contiguous Zone, Office for Ocean Affairs and the Law of the Sea, United Nations, 1995

New Directions in the Law of the Sea:

Vols. i-ii, by Lay, S.H., Churchill, R., and Nordquist, M., (1973)

Vols. iii, by Churchill, R., Simmonds, and Welsh, J., (1973)

Vols. iv, by Churchill, R., and Nordquist, M., (1975)

Vols. v-vi, by Lay, S.H., Churchill, R., and Nordquist, M., (1977)

Vols. vii-viii, by Lay, S.H., Simmonds, and Nordquist, M., (1980)

Vols. ix-xi, by Simmonds, and Nordquist, M., (1980)

The Law of the Sea: Baselines, Office for Ocean Affairs and the Law of the Sea, United Nations, 1989

The Law of the Sea. Current Developments in State Practice, United Nations, Office for Ocean Affairs and the Law of the Sea, 1987

The Law of the Sea: National Claims to Maritime Jurisdiction, Office for Ocean Affairs and the Law of the Sea, United Nations, 1989

The Law of the Sea: Maritime Boundary Agreements, 1970-1984, Office for Ocean Affairs and the Law of the Sea, United Nations, 1984

The Law of the Sea: Regime of Islands, Legislative History of Part VIII (Article 121) of the United Nations Convention on the Law of the Sea, Office for Ocean Affairs and the Law of the Sea, United Nations, 1988

The Law of the Sea: Straits Used for International Navigation, Legislative History of Part III of the United Nations Convention on the Law of the Sea, Volume I, Office for Ocean Affairs and the Law of the Sea, United Nations, 1992

The Law of the Sea: Straits Used for International Navigation, Legislative History of Part III of the United Nations Convention on the Law of the Sea, Volume I, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, 1992

International Law Commission

Yearbooks of the United Nations International Law Commission, Vol. I and II, 1950-1956

ILC Yearbook, 1950. (A/CN.4/Ser.A/1950)

ILC Report to the General Assembly, 1950. (A/1316)

- ILC Yearbook, 1951. (A/CN.4/Ser.A/1951)
- ILC Report to the General Assembly, 1951. (A/1858)
- ILC Yearbook, 1952. (A/CN.4/Ser.A/1952)
- ILC Report to the General Assembly, 1952. (A/2163)
- ILC Yearbook, 1953. (A/CN.4/Ser.A/1953)
- ILC Report to the General Assembly, 1953. (A/2456)
- ILC Yearbook, 1954. (A/CN.4/Ser.A/1954)
- ILC Yearbook, 1955. (A/CN.4/Ser.A/1955)
- ILC Yearbook, 1956. (A/CN.4/Ser.A/1956)
- ILC Report to the General Assembly, 1956. (A/3159)

UNCLOS I

First United Nations Conference on the Law of the Sea; Official Records.

- Vol. I. Preparatory Documents (A/CONF.13/37)
- Vol. II. Plenary Meetings (A/CONF.13/38)
- Vol. III. Documents (A/CONF.13/39)
- Vol. VI. Fourth Committee (Continental Shelf) (A/CONF.13/41)

UNCLOS II

Second United Nations Conference on the Law of the Sea; Official Records.

Summary Records of Plenary Meetings and of Meeting of the Committee of the Whole, Annexes and Final Act

UNCLOS III

Third United Nations Conference on the Law of the Sea; Official Records.

- Vols. I-III, First and Second Sessions
- Vol. IV, Third Session
- Vol. V, Fourth Session
- Vol. VI, Fifth Session
- Vols. VII-VIII, Sixth Session
- Vols. IX-X, Seventh Session
- Vols. XI-XII, Eighth Session
- Vols. XIII-XIV, Ninth Session
- Vol. XV, Tenth Session
- Vols. XVI-XVII, Eleventh Session

United Nations Source Documents on the Third United Nations Law of the Sea Conference, Caracas 1974, (LOS-3). Compiled by the editors of *Ocean Science*, New Nautilus Press, Inc., Washington DC.

Other Sources

Conventions Maritimes Internationales, Queneudec, J.P., (ed.), Paris, éditions Pedone, 1979.

Ελλάδα-Τουρκία, Αρθρογραφικός Δείκτης Αμυντικής και Εξωτερικής Πολιτικής 1986-1989, [Greece-Turkey, an Annotated Collection of Articles on Defense and Foreign Policy], ELIAMEP, Argyropoulos, A., (ed.), 9 Occasional Papers and Monographs, Papazissis, Athens, 1990, Vol. 2, Book IV, by Leanza, U., Sico, L., Ciciriello, M.C., Oceana Publications, Italy-New York, 1988.

Greek White Book, American Edition, Athens, 1940.

International Boundary Cases: The Continental Shelf, Research Centre for International Law, Cambridge University, Vols. I, II, Cambridge, Grotius Publications, 1992.

International Maritime Law Conventions, Vol. 4, Maritime Law, British Shipping Laws, by Nagendra Singh, Stevens and Sons, London, 1983.

International Law Documents, by Evans, M.D., Blackstone Press, London, 1991.

Keesing's Report of World Events, Vol. 35, 36.

Mediterranean Continental Shelf, Delimitations and Regimes, International and National Legal Sources.

Western Europe and the Development of the Law of the Sea, Greece, 1913-1969, Vol. II, Durante Rodino, Oceana Publications, January 1980.

Introduction

Despite the fact that the situation in the Balkans has deteriorated drastically since the *annus mirabilis* of 1989, with serious implications for regional stability and peace, the attentions of Greece and Turkey in relation to security issues are still focused on each other. Since 1974, the two countries have on four occasions faced serious crises which almost resulted in full-scale war. In 1974, the discord between the two countries was mainly the Cyprus issue, whereas in 1976 and in 1987 it was the Aegean Sea continental shelf. In January 1996, it was for the first time the dispute over the sovereignty of two tiny Aegean islets in the Dodecanese. This dispute was related to the territorial status quo established with the Lausanne Peace Treaty in 1923 which remained unchallenged for more than 70 years. The term "Aegean Sea dispute" is used to characterize a whole complex of topics which, although centered on the delimitation of the Aegean continental shelf, also extends to other areas such as the breadth of the territorial sea, the national airspace, the control of the air navigation region over the Aegean, the demilitarization of the eastern Aegean islands and recently the territorial sovereignty over some islets and rocks.

For the last twenty years the two countries have faced repeated cycles of "confrontation-negotiation-confrontation."¹ This book investigates these cycles and evaluates the claims as well as the diplomatic correspondence from a legal point of view; it examines the extent to which the continuous and parallel process of international law and more specifically of the international law of the sea has influenced the diplomatic position of the two countries; it explores the possible implications of international jurisprudence for the dispute; and it defines and clarifies the aims of the two parties in relation to the dispute.

During the last twenty-four years, diplomacy between Greece and Turkey has concentrated almost exclusively on the Aegean. As a result, the maritime zones of the Aegean constitute the central focus of this study. Although

1. Coufoudakis, *Greece, the New Europe and the Changing International Order*, 1993, p.399.

the airspace is not *prima facie* connected at first sight with maritime zones, the fact that it is still defined by reference to the land of a state and its waters makes its examination essential to this study. Due to the January 1996 crisis concerning sovereignty over the Imia/Kardak islets, special attention has also been given to the territorial settlement of the Aegean region as it has been established by various international instruments. The demilitarization of the Aegean Sea islands is not examined because it is a rather static problem which has been investigated sufficiently in other studies.² At this point, it should be pointed out that the general purpose of this study is not to attempt to predict which directions the two states will take in the future.

Chapter 1 surveys the geographical peculiarities of the Aegean Sea and examines the relevant domestic legislation of each country in relation to maritime zones. The territorial sea, baselines, the contiguous zone, the continental shelf and the exclusive economic zone are examined within this context. Moreover, important information concerning certain technical issues and NATO air operational control are presented to better understand the dispute.

In an area where historical animosities have seriously affected perceptions of external threats and still color the views of the one country towards the other, history is an important factor. Chapter 2 therefore begins with some historical elements, then continues with the conventional arrangement of the status of the Aegean Sea, and finally analyzes the Treaties of Lausanne (1923) and Paris (1947).

Since the last World War, the progressive development and codifications of international law, together with international jurisprudence, have shown that the international law of the sea is not a static body of rules but, on the contrary, is essentially dynamic in almost every aspect. Chapter 3 surveys this development and also reviews the relations between the two countries in the years from 1950 to 1972. It examines the first continental shelf delimitation case decided by the International Court of Justice in 1969, as well as the contemporary legal position in relation to issues which, after 1973, constituted sources of friction.

Having looked at the evolution of the relevant rules of the international law of the sea, chapter 4 turns to the genesis of the Aegean continental shelf dispute, as well as its development, and the related issues of the territorial sea and the Aegean islands. It examines the exchange of diplomatic notes, the po-

2. See *inter alia*, Pazarcı, 1986; Economides, 1989.

sitions of the two countries in the first sessions of the Third United Nations Conference on the Law of the Sea and how these positions were related to their conflict. Finally, it studies the national airspace problem and the possibility of Greek airspace rights being acquired by prescription.

Chapter 5 examines the first Aegean crisis in 1976, U.N. Security Council Resolution 395/1976 and the problems of its interpretation, and the decision of the International Court of Justice in the *Aegean Continental Shelf* case, especially in comparison with more recent decisions of the Court. It also focuses on the attitude of the parties to the dispute towards other neighboring states with respect to maritime zones.

Chapter 6 analyzes the Bern Agreement and its interpretation, examines the *Anglo-French* arbitration case and its relevance to the Aegean Sea dispute and follows the bilateral negotiations and the proposals of the two parties in UNCLOS III. It also examines the proposals which have been made for the common exploration and exploitation of the Aegean continental shelf on the basis of the Jan Mayen conciliation report.

The analysis in chapter 7 divides the 1981-1986 period into three sections. Thus, section A discusses the problems between the two countries at a bilateral level just after the election of the Socialists in Greece and examines whether the Bern Agreement was terminated or not. Section B examines the *Tunisia-Libya* case and the end of UNCLOS III. It analyzes the provisions of the 1982 Convention on the Law of the Sea and gives particular emphasis to the claims underlying Turkey's persistent objection to a twelve-mile territorial sea. Section C aims primarily to analyze the rules of maritime delimitation as they have emerged from the *Gulf of Maine*, the *Guinea/Guinea-Bissau* and the *Libya/Malta* delimitation cases.

Having looked at the evolution of delimitation criteria in UNCLOS III as well as at the relevant jurisprudence, chapter 8 turns exclusively to the bilateral relations between Greece and Turkey after 1987. The March crisis of 1987 raised a number of questions: the legal significance of exploration activities over an undelimited continental shelf; threats to regional peace and security generated by these activities; and the right of the injured state to claim compensation. This crisis led to a diplomatic exchange of talking points between the two prime ministers. The recently revealed content of these talking points is examined in this chapter, together with their status in modern diplomacy and the possibility of their having created mutual obligations. Chapter 9 focuses its attention on the last two delimitation cases of *St. Pierre*

and *Miquelon* and *Jan Mayen* and traces trends and the evolution of delimitation criteria relevant to the Aegean Sea.

Chapter 10 completes the presentation of Greek-Turkish relations by examining recent developments up to December 1996. The January 1996 crisis and the legal positions of the two countries in relation to sovereignty over the two uninhabited islets in the Dodecanese, as revealed by their diplomatic correspondence, and the existence of "gray zones" over an unknown number of insular formations in the Aegean are examined in this chapter. Chapter 11 examines in detail the territorial settlement of the Aegean as established by the Treaties of Lausanne and Paris. The value of the 1932 Italian-Turkish Agreement, the conditions and rules in existence at the time that the legal status of the Aegean was established and important legal documents and official correspondence between the two countries are examined in order to shed light on the question of sovereignty.

The two important issues addressed in chapter 12 are the obligation for negotiation between the two countries and the legal or political nature of the Aegean dispute. At the end of this essay, an attempt is made to "prescribe" a possible solution to the complex of problems described under the generic term "Aegean Sea Dispute."

1. Preliminary Considerations

A. GEOGRAPHY OF THE AEGEAN AREA

The Aegean Sea lies on the eastern side of the Mediterranean Sea between Europe and Asia. It is bound on three sides by continental land masses and on the fourth by a series of islands which form a chain on the southern side. While the eastern side is formed by the continental land mass of Turkey, the three other sides are encircled by the continental shores of the Greek mainland to the north and west and by the Greek islands of Kythera, Crete, Karpathos and Rhodes in the south.

The dimensions of the Aegean Sea are 620 km. from north to south (Kavalla-Crete) and 460 km. from east to west (Kythera-Rhodes) and at its narrowest it is 130 km. (Euboea-Tcheshme, Turkey). The Aegean Sea is dominated by over 3,000 islands, islets and rocks and it was for this reason that the Venetians originally called it *archipelagos*.¹ The main characteristic of insular formations in the Aegean is that they are not isolated but form a series of chains along the sea. With the exception of two islands off the entrance to the Dardanelles, Imbros (Gokceada) and Tenedos (Bozcaada), and some rocks along the Anatolian coast² all the others (3,042)³ are under Greek sovereignty.

1. The original meaning of the word archipelago, first used to characterize the Aegean Sea, has changed completely after the UNCLOS III and the LOSC (arts.46-54) and applies only to states that are composed entirely of groups of islands. See map 1.

2. Article 12 of the 1923 Lausanne Treaty states: "except where a provision to the contrary is contained in the present Treaty, the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty." The Turkish names of the islands are in parentheses. Greek terminology is used because, despite the exercise of long Turkish rule over these islands for a number of years, they are still better known by their Greek names. The Turkish names were introduced in the 1970s.

3. It is difficult to give a precise number of the Aegean islands. LOSC refers in art.121 to rocks "which cannot sustain human habitation or economic life of their own." It is not clear whether an uninhabited rocky islet with spring water is a rock or an island according to the provisions of the above-mentioned treaty. For these reasons, the number

Geographically, the Greek islands fall into three large groups: the Cyclades dominating the center of the Aegean Sea, the Sporades consisting of the islands northeast of Euboea, and a third group running north-south along the Anatolian coast from the island of Samothrace off the entrance of the Dardanelles to Kastellorizo on the northern side of the Libyan Sea between Crete and Cyprus. The southern islands of this third group are called the Dodecanese. Finally, on the southern side of the Aegean lies the largest of the Greek islands, Crete.

In total, the Greek islands in the Aegean cover an area of 23,182 sq. km.⁴ and have a population of over one million.⁵ The ratio between the continental land areas of Greece and the Aegean islands (5:1) is the highest of all the Mediterranean states. The same applies with respect to the percentage of the population which dwells on the islands. Both these factors, the insular surface and the population, ensure that Greece is ranked ahead of all other continental Mediterranean states on the basis of the so-called "insularity rate" (*taux d'insularité*).⁶ The plethora of islands in the area has the effect of limiting considerably maritime spaces in the Aegean. Under the present six-mile territorial limits, the areas over which the coastal state's full territorial and political sovereignty (*imperium* and *dominium*) is exercised are slightly larger than the areas of the high seas. Greece presently exercises sovereignty over 77,474 sq. km. or 41.38% of the Aegean, of which 3,990 sq. km. (2.13%) is constituted of internal waters and 73,484 sq. km. (39.25%) of territorial sea.⁷ Turkey exercises sovereignty over 14,040 sq. km. or 7.5%. High seas make up the remaining 51%.⁸ The length of the Greek continental coasts

given is the number presented by the Turkish foreign minister in *Le Monde*, 8 November 1976.

4. National Statistical Service of Greece, *Statistical Yearbook of Greece 1993*. Based on the census of 1991, the total area of the inhabited islands is 22,691 sq. km. and that of the uninhabited islands and islets is 491 sq. km.

5. Ibid. According to the 1991 census, the population of the Aegean islands was 1,350,510 out of a total population of 10,134,534, or 13.3%. Ahnish, 1993, gives a population of 145,071 without indicating the source of this figure, p.363.

6. Kolodny, 1974, p.32, gives the following figures:

Surface 1,000 sq. km.	Population	Surface %	Population %
25.1	1,299,000	19.1%	14.8%

in Michael, 1983, Vol. A', p.71.

7. *Study on the Construction of Straight Baselines*, 1984.

8. Some Turkish sources give the following figures: Greece, 35%; Turkey, 8.8%; high seas, 56.2%; *The Turkish-Greek Relations and the Great Idea*, 1985. The figures

in the Aegean is 2,180 km. and that of the insular coasts is 5,559 km., with a total length of 7,739 km. The Turkish coasts, continental and insular, have a total length of 1,776 km.⁹

The Aegean Sea constitutes an important international sea-route for traffic passing to the Black Sea. It is significant that during the Cold War era the islands of the Aegean were considered as extending the strategic importance of the Turkish straits several hundred kilometers southwest.¹⁰ In 1987, it was

given here have been calculated on the basis of the line adopted by the International Hydrographic Conference (London, 1919) and expressed in a circular of the International Hydrographic Office in Monaco on 15 February 1923; thus, the total area of the Aegean is 187,223 sq. km.

9. Stavrinou, 1986, p.58. Stavrinou's calculations were made on precise charts and with the use of an "Odysometer." Only the coastal frontage of these islands to the Aegean Sea was taken into consideration. Thus, the southern coasts of Crete (556 miles), the southeastern coasts of Rhodes (100 miles), Karpathos (10 miles), and Kassos (20 miles), and the western coasts of Kythera (25 miles), Antikythera (12 miles), and Elaphonissos (13 miles) were not included (see map in Stavrinou, pp.60-61). Karl, *AJIL*, 1977, gives totally different coastal lengths for both countries (Greece, 825 miles; Turkey, 360 miles) pp.669-672. The difference derives from the fact that he measured only the general direction of the coastlines and he included only the coasts of the islands of Crete, Lesbos, Rhodes and Karpathos. Ignoring the subjectivity of a measurement based on the general direction of the coastline, along with the fact that no details are given and that mistakes in the calculations are made (fn. 119), nevertheless, it is difficult to understand why all the other Aegean islands are simply ignored. The ratio of coastlines according to Karl's calculations is as follows:

$$\frac{7,739}{1,776+7,739} = \frac{7,739}{9,515} = 81.3\%$$

According to Yolga, the Greek continental coasts are 2,066 km. whereas the Turkish coasts are 2,326 km. No sufficient explanation is given for these figures; Yolga, *The Aegean Issues*, 1989, p.134. Ahnish, 1993, calculates 427 miles of coastal length for Turkey and 384 miles of coastal length for Greece without explaining the basis of his calculations. The coastal front of the Aegean islands was not calculated, p.363. As regards the subjectivity of these calculations, see *infra*, pp.298-301. According to a recent document of the Turkish Ministry of Foreign Affairs, Turkey has 3,000 km. of coastline in the Aegean; see *Legal Background on the Kardak Crisis in a Nutshell*, published on the World Wide Web site of the Turkish Foreign Ministry, (<http://www.mfa.gov.tr/grupf/kardak/kardak15.htm>). No explanation is given about these numbers.

10. Valinakis, *ELIAMEP Yearbook*, 1988, pp.64-67. Coufoudakis, in *NATO's Sixteen Nations*, 1986, pp.34-39. See also Lazarides, *ELIAMEP Yearbook*, 1988, pp.38-39.

estimated that more than 50% of Soviet Bloc trade passed through the region each year.¹¹

In this sea, distances are relatively small and the shipping channels limited and rather narrow. The narrow channels which connect parts of the high seas and can be considered as routes of international navigation are, in the southeast, the Caso passage, between Crete and Kassos, and the Scarpanto passage, also known as the Karpathos strait, between Karpathos and Rhodes, both of which join the high seas of the Aegean Sea to those of the Mediterranean Sea, and, in the southwest, the Cerigotto passage or Kythera strait between Antikythera and Crete which joins the high seas of the Mediterranean on the west to those of the Aegean on the east.¹² Another important international passage lies between the Turkish islands of Imbros and Tenedos. This passage connects, via the straits of the Dardanelles and the Bosphorus, the Mediterranean with the Black Sea. Whereas the other passages are part of the high seas, the waters of this latter passage are part of the Turkish territorial sea. There are also two very narrow belts of high seas two miles wide, between the Cyclades and the Dodecanese group of islands, where a vessel can travel without entering Greek territorial waters.

Besides these channels which are part of the high seas, there are some other straits where vessels have to cross territorial or internal waters. Thus, in the southwest, there is the Cerigo passage, between Kythera and Antikythera, in the west, the Isthmus of Corinth between the Peloponnese and Attica, and in the northeast the Dardanelles and Imbros and Tenedos which connect the Sea of Marmara (Propontis) with the Aegean.¹³

B. DOMESTIC LEGISLATION OF THE TWO STATES RELATING TO THE AEGEAN SEA

The delimitation of maritime zones in the Aegean constitutes the basic field of conflict between the two countries. Both states have different views regarding delimitation. For these views to become more comprehensible, it is necessary to examine the domestic legislation of the two states. This legislation is divided according to the traditional criteria of international law relating to the territorial sea, airspace zone, continental shelf and exclusive economic

11. *The Contribution of Greece to the Common Defence*, 1987, p.6.

12. These straits were mentioned by Kennedy, 1957, pp.140-142.

13. On straits, see O'Connell, 1975, pp.97-113.

zone. Nevertheless, in most of these separate fields, the relevant underlying issues are interrelated.

1. TERRITORIAL SEA

In the Aegean Sea, both Greece and Turkey currently claim territorial seas of six miles. As the area is scattered with islands, the residual areas of high seas are already limited. A possible extension of the territorial sea from six to twelve miles would have a dramatic effect.¹⁴ Substantial areas of what would otherwise be high seas would become parts of the Greek territorial sea and the number of points at which shipping could use international waters would be limited. More specifically, the Caso passage between Crete and Kassos, the Scarpanto passage between Karpathos and Rhodes and the Cerrigotto passage between Antikythera and Crete in the southern Aegean would constitute part of Greek territorial waters. In the central Aegean, the fact that the Cyclades group of islands lies so close to Samos, Ikaria, Chios, and the Dodecanese islands would reduce the high seas to a few small areas, enclaved within Greek territorial waters. In the northern Aegean, the legal regime of passages which connect the Dardanelles with the high seas between the islands of Lemnos and Lesbos would, however, not change.¹⁵ Under these circumstances and because of the tension existing between the two countries, it is understandable why a possible extension of Greek territorial waters is one of the basic areas of dispute between the two sides.

(a) Greece

Almost immediately after its independence the Greek state issued several laws dealing with the territorial sea. The main characteristic of all of these laws was that, up to 1936, they addressed only some of the aspects of the territorial sea regime. Between 1845 and 1913, and despite the fact that the status of the territorial sea was examined not only by the Greek government but even the Greek courts, several different forms of territorial sea limits co-existed.¹⁶ In 1913, a law concerning passage and sojourn of merchant ves-

14. See Rousseau, *RGDIP*, 1982, pp.808-809.

15. See Bowett, 1979, p.257.

16. Archives of Th. Halkiopoulos. 1845: Sanitary Regulation, art. 53, no reference to the breadth of the territorial waters. 1856, Law 392, "wrecks, salvage, lagan," which according to the Greek High Court [Ἀπειος Πάγος], 157/1902 and Athens Court of Appeal [Εφετείο Αθηνών], 2041/1906, refers to the cannon-shot limit, *Θέμις* [*Themis*], Vol. II,

sels along the Greek shores and policing of the ports and harbors in time of war explained that "Greek sea means a maritime belt extended from the shore to a distance of ten nautical miles."¹⁷ Just before the beginning of the First World War, the Greek government expressed its consent to a six-mile territorial sea.¹⁸ In 1918, Article 85 of the Law 1165 created a "*zone située en mer à trois kilomètres des côtes*" [a zone situated into the sea lying three miles from the coasts] for custom purposes.¹⁹

The first attempt to define the territorial sea in time of peace took place in 1931 when a Presidential Decree defined the extent of the territorial sea for the purposes of aviation as ten miles.²⁰ It is noticeable that the Greek state in 1931 avoided defining with precision the extent of the territorial waters as it concerns navigation. One possible explanation could be that Greece during that period was not in favor of a wider territorial sea because of the size of its merchant fleet.²¹

This omission was indirectly rectified in 1934 when a law concerning the fees paid in cases of salvage stated that areas defined "for the purposes of the present law, as territorial sea are considered the territorial waters in a distance of three nautical miles from the coasts without prejudice to provisions of laws concerning special matters."²² A similar arrangement was made in 1935 in a law concerning "towing within the territorial sea."²³ These two laws show that the traditional criterion of *terrae potestas finitur, ubi finitur armorum vis* together with a territorial sea limit of three miles were accepted as a

p.644; Vol. IH, p.601. 1895: Customs Regulation between Greece and Egypt refers to a ten km. area of customs control. Brownlie, 1990, p.188, fn.47 and Heinzen, *SLR*, 1979, p.63 refer to a three-mile fishing zone, established by Greece in 1869. However, the writer has been unable to identify any law of that period which established a three-mile maritime zone. See also Georgacopoulos, 1988, p.32, fn.22.

17. Law ΔΡΜΑ [4141], 26 March/11 April 1913, art.1 in Rodino, p.1.

18. See Papakostas, *EEN*, 1958, p.160; Acts 29-7/11-8-1914, 11/24-8-1914. Concern was raised in the English Foreign Office about this zone; the Admiralty wrote to the Foreign Office: "the number and distribution of the Greek Aegean islands makes the 6 miles limit inadmissible from the naval standpoint," 21 August 1914, *FOCP*, 1841, No. 28, also No. 29, 31. Also Lowe, *BYBIL*, 1981, p.125.

19. Code des Douanes, Law 1165/1918, 17 March/6 April 1918, Rodino, 1980, p.5.

20. Presidential Decree 6/18 September 1931, Rodino, 1980, p.9. See *infra* p.24.

21. Georgacopoulos, 1988, p.35.

22. Law 6114, 24/30 April 1934.

23. Law A.N. 19/20 November 1935, *EtK*, A' 582/35.

customary rule in Greek domestic legislation.²⁴ Greece continued to consider the Presidential Decree defining the extent of the territorial sea as ten miles for aviation purposes as valid while it accepted the three-mile limit as a general rule.²⁵

The first legal document which settled exclusively the Greek territorial sea was law 230 of 17 September 1936. According to this law:

"The extent of the territorial sea is fixed at six nautical miles from the coast, without prejudice to provisions in force concerning special matters, with respect to which the territorial zone shall be delimited at a distance either larger or smaller than six miles."²⁶

Article 139 of the *Code of Public Maritime Law*, which was ratified in 1973, reconfirmed that the "territorial sea comprises a sea zone, the breadth of which is fixed at six nautical miles."²⁷ According to this article, the breadth of the territorial sea "may be fixed from time to time by Presidential Decree, as proposed by the Council of Ministers."

Finally, as Greece is a member of the European Union, EU policy towards the territorial sea should be noted. On 27 April 1978, two years before the entrance of Greece into the European Communities, the Commission presented a resolution inviting all the member states which had not yet proclaimed an extension of their territorial sea to twelve miles to do so.²⁸ Furthermore, in 1981 the Fourcade Report on the customs territory of the European Community spoke of the right of the Greek islands to claim a territorial sea of twelve miles on the same footing as continents.²⁹ Today, Greece remains the only member state of the EU in the Mediterranean Sea which does not claim a territorial sea of twelve miles.

24. Andreopoulos, 1977, pp.163,165,172,203, fn.28a; Koulouris, *Νομικό Βήμα* [*Nomiko Vima*], 1978, p.466. According to Rozakis, the application of this rule started customarily in 1929, 1988, p.460, fn.180.

25. The same arrangement was made in 1935 with the law concerning "towing within the territorial sea," 19/20 November 1935.

26. Law 330/17, September-13 October 1936 in Rodino, 1980, p. 15.

27. See Georgacopoulos, 1988, p.39.

28. *Official Journal of the European Communities*, C.146, 21 July 1978, p.11.

29. Fourcade Report, Document 1-234/81, PE 70.688/def, 27 May 1981.

(b) Turkey

Turkey was more relaxed in its attitude towards territorial waters. It was not until 1914 that the Ottoman Empire adopted a six-mile territorial sea for all Ottoman waters.³⁰ In the Lausanne Treaty of 1923, the extent of Turkey's territorial sea was considered to be three miles. Although this was not specifically prescribed anywhere in the document, it was implied at two points. A distance of three miles was adopted in Article 12 since "the islands situated at less than three miles from the Asian coast remain under Turkish sovereignty" with the exception of the principal islands of the Aegean.³¹ This second distance is also suggested by the maps that accompanied the treaty. In these maps, the narrow maritime spaces between Greece and Turkey were divided according to a median line equidistant from the opposite coastlines.³²

The six-mile limit of the decision of the Sublime Porte was repeated by the Turkish government in 1964 by law 476:

Article 1: Turkish territorial waters constitute an integral part of the Turkish territory. The width of the Turkish territorial sea is six nautical miles...

Article 2: As against states claiming wider territorial waters, the width of Turkish territorial waters is determined on the basis of reciprocity.³³

According to this latter article, although it seemed that in theory the rule for the Turkish territorial sea was six miles, in reality this situation applied only in the Aegean sea where Greece claimed six miles. In the Black Sea and along its Mediterranean coast, Turkey claimed twelve miles as a matter of reciprocity towards other states in the area.³⁴ Article six explained that the same rules apply to the territorial sea of the islands.³⁵

The initial plan of the Turkish government was to establish a territorial sea of twelve miles in all the areas surrounding the Anatolian peninsula.³⁶

30. Act of the Sublime Porte, J. No. 5417/99. See also O'Connell, *Aegean Sea Pleadings*, p.89.

31. Yolga, in *The Aegean Issues: Problems and Prospects*, 1989, p.142.

32. See the response of Israel to ILC that the Treaty of Lausanne "while it does not specifically prescribe the extent of the territorial waters...seems to imply the so called 'three miles rule'," *YBILC*, 1950, Vol. II, p.54, Doc. A/CN.4/19, 24 January 1950.

33. Turkish Law, 476/25 March 1964; *Limits in the Seas*, 32.

34. For the territorial limits of Syria, see *infra*, p.207.

35. For an analysis of this law, see Celik, *TYBIR*, 1964, pp.53-71.

36. See relevant statement of Turkey in ILC concerning the breadth of the territorial sea, *YBILC*, Vol. II, p.74, Doc.A/CN.4/99.21.

Thus, Article 2 of a draft law concerning the Turkish territorial sea provided that: "*l'étendue des eaux territoriales est de 12 miles marins, exception faite des dispositions conventionnelles et des cas mentionnés à l' Article 9*" [the extent of the territorial waters is twelve nautical miles with the exception of the conventional dispositions and the cases mentioned in Article 9].³⁷ It seems that Ankara informed Athens of its plans and the Greek government expressed its disagreement and its intention to proceed with a similar extension of the Greek territorial waters to twelve or even to twenty miles.³⁸ This possibility is the most likely cause of Turkey's decision not to implement the draft law.

The most recent Turkish law concerning the territorial sea was passed in 1982.³⁹ Under Article 1 of this law, the extent of the Turkish territorial waters is fixed at six miles. The Turkish government has the right to alter the extent of the territorial sea beyond the six-mile limit in areas where there are international agreements or special circumstances. Such alteration must be in conformity with the principle of equity. On 6 June 1982, the Turkish Cabinet decided to continue the existing regulations concerning the territorial sea in both the Mediterranean and Black Seas.⁴⁰

2. BASELINES

The breadth of the territorial sea as well as that of the other maritime zones is always measured from the baseline of the coastal state. Up to 1951, the normal baseline was the low-water mark along the coast.⁴¹ As a result of the judgment in the *Anglo-Norwegian Fisheries* case, the rules enunciated by the ICJ with respect to the so-called straight baseline system were considered to have been incorporated into international law.⁴² The two countries in the Aegean are in fact using the two different systems to draw their baselines.

37. Cited by Akin, M.Z., in his thesis "*La condition juridique des navires dans les eaux territoriales et intérieures d'après le droit international général et le droit interne turc*," Paris, 1977, referred to by Katsoufros, 1985, p.81, fn.29,66.

38. Information provided by Mr. Economides, 21 November 1992. See also the debates in the Greek parliament, 9 May 1963, *Minutes of the Greek Parliament*, p.692.

39. Territorial Waters Act, 2674, *OfTuGaz*, 20 May 1982.

40. Decision of the Turkish Cabinet, 8/4762, 6 June 1982; Pazarci, H., *RBelDI*, 1984-1985, p.266.

41. O'Connell, 1982, p.172.

42. *Fisheries*, *ICJ Reports*, 1951; for analysis of the judgment, see Waldock, *BYBIL*, 1951, pp.114-171; Evensen, *AJIL*, 1952, pp.609-630.

Although this problem is not as important as the problems of the breadth of the territorial sea or the right of islands to generate a continental shelf and an EEZ, it is nonetheless a significant issue since in the limited maritime spaces of the Aegean a baseline which departs two or three miles from the shoreline can mean the accrual of substantial areas to the coastal state which uses such a baseline.

(a) *Greece*

In Greek domestic legislation, there is no law concerning the drawing of baselines. Law 230 of 1936 establishing the six-mile territorial sea says that this is measured "from the coast" without defining the meaning of this word and without making any other special provision for baselines.⁴³ Article 139 of the Code of Public Maritime Law of 1973 does not even refer to any particular coasts from which the breadth of the territorial sea is to be fixed.⁴⁴ Even before 1936, Greece had adopted in practice the traditional low-water mark, and it continues to do so today.⁴⁵ The method contemplated to effect the application of the low-water mark is the *courbe tangente* which is drawn by arcs of circles from points along the low-water line.⁴⁶ All the bays are closed with straight baselines of up to a length of ten miles.⁴⁷

When Greece became a party to the Geneva Convention on the Continental Shelf⁴⁸ in 1972, it made a reservation according to which it would, in the absence of international agreement, "apply the normal baseline for the purpose of measuring the breadth of the territorial sea" with respect to states whose coasts are adjacent to or opposite each other.⁴⁹

A draft law concerning the breadth of the territorial sea was prepared by the Greek government in 1978. Article 3 of this draft law proposed a system of straight baselines as well as straight closing lines for bays whose mouth did not exceed 24 miles.⁵⁰ This draft law was never implemented.

43. Schinas, *EDDDE*, 1971, p. 380.

44. Katsoufros, *Le Differend Greco-Turc*, 1985, p.76.

45. Bowett, 1979, p.256.

46. On the three methods for drawing baselines, see *Fisheries, ICJ Reports*, 1951, p.128.

47. Katsoufros, *Armenopoulos*, 1980, p.147.

48. Law 1182 of 14 June/8 July 1972, *EtK*, A' 111/1972.

49. *Limits in the Seas*, 36, p.41, reservation in §2, art.1, and not in art.12 as stated.

50. Information provided by the *Study on the Construction of Straight Baselines*, 1984.

(b) Turkey

By law 476 of 1964 concerning the territorial waters of the state, Turkey proclaimed a system of straight baselines in areas where the coast was indented or bordered by islands. According to this law:

4. The normal baseline from which the width of the territorial sea is measured is the lowest ebb line extending along the coast. For indented coasts, or in areas with islands located close to the shore, the method of the straight baseline connecting the foremost points of the shore and the islands shall apply.

5. Waters in the coastal side of the baselines; gulfs with an entrance opening of not more than 24 nautical miles; for gulfs with an entrance opening of more than 24 nautical miles, the portion located behind the 24-mile straight baseline connecting two opposite shores of the gulf by leaving the largest body of water on the territorial side; waters situated in the higher side of the outermost permanent installations forming an integral part of the port system; roads and outer ports, all are considered as Turkish internal waters.⁵¹

In practice, the Turkish straight baselines run to a total length of 621 miles and no single segment is greater than twenty-four miles, although several are over twenty miles in length.⁵² Article 6 provides that the territorial waters of the islands are determined in accordance with the principles mentioned above. Thus, the two principal Turkish islands, Imbros and Tenedos, are connected with the Dardanelles coast and close the entrance of the straits.⁵³ Although a baseline limits the internal waters of a state from the other maritime zones, free transit in the Bosphorus is subject to the Montreux Convention of 1936.⁵⁴ Finally, it is interesting to note that the baselines system adopted by Turkey coincides in general with the limits between the Athens/Istanbul Flight Information Regions.⁵⁵ The Territorial Waters Act of 1982 gave to the Turkish Council of Ministers the right to delimit the base-

51. Territorial Waters Law, No 476, 15 May 1964; *Limits in the Seas*, 32.

52. Limits in a small scale chart "Türkiye Karasuları esas ve Düz Hartları Karıtası, 8003, 1: 1,100,000, 17 May 1965; see Francalanci, Romano, Scovazzi, 1986, pp.130-131.

53. Bowett, 1979, p.255. See map 4.

54. See *infra*, pp.323-329; see also Macfie, 1993, pp.213-227; see also art.8 of LOSC.

55. See *infra*, pp.17, 113-114.

points from which the breadth of the territorial sea is to be measured.⁵⁶ However, during the March crisis of 1987 a map appended to the decree issued by the Council of Ministers, by which licenses were granted to the Turkish Petroleum Company, did not adopt a system of straight baselines. This was considered as implying that the low-water line "still represents the national coastline of Turkey."⁵⁷

3. THE AIRSPACE ZONE

There are three questions related to Aegean airspace: the status of the Flight Information Region (FIR), the responsibility of air operational control within NATO and the national airspace. This study will examine almost exclusively the problem of national airspace over the Aegean since this is the only problem which is directly linked with the maritime zones. Despite the fact that the development of aerial navigation in the present century gave rise to much speculation and provided a conventional framework of general law governing international aviation,⁵⁸ national airspace is still defined as the airspace above state territory. Territory is defined as the "land areas and territorial waters."⁵⁹ Thus, national airspace is directly linked with a state's territorial sea.⁶⁰ Nevertheless, it would be an injustice for a presentation of the Aegean airspace problem to ignore two questions, namely, the FIR and NATO operational control.

(a) *Flight Information Region*

The increase in international civil air traffic in the latter part of this century has meant that air safety is very much dependent upon air traffic control procedures. Thus, the Chicago Convention on International Civil Aviation in 1944 provided that: "Each contracting State may...designate the route to be followed within its territory by any international air service and the air-

56. Territorial Waters Act, 2674, *OfTuGaz*, 20 May 1982. See map 2.

57. Ahnish, 1993, p.183.

58. See the "Paris Convention for the Regulation of Aerial Navigation," 1919, *UKTS*, 1922, No.2; "Havana Convention on Commercial Aviation," 1928, *AJIL*, 1928, suppl. pp.124-133; and the "Chicago Convention on International Civil Aviation," 1944, *UKTS*, 1953, No.8, and the other instruments and Agreements which filled the gaps of the Chicago main Convention (hereafter Con.ICA0).

59. Article 1 of Con.ICA0.

60. Martial, *CBR*, 1952, pp.245-263; Hailbronner, *AJIL*, 1983, pp.490-520.

ports which any such service may use.”⁶¹ The regulatory functions relating to the safety of international air navigation became the responsibility of a specialized agency of the United Nations, the International Civil Aviation Organization, established by the Chicago Convention.⁶²

In order to facilitate international air transport, the entire airspace of the world was divided into “Air Navigation Regions,” each one of which included several “Flight Information Regions” where air traffic control responsibilities were passed to the “Air Traffic Services Authorities” of the states over whose territory those regions were located.⁶³ These FIRs are made up of national airspace connected to a state’s land and the territorial waters, as well as international airspace. The air traffic control responsibilities that a state possesses within its FIR are designated only for the safety and facilitation of international air traffic and cannot be compared with the exclusive sovereignty that a state enjoys within its national airspace.⁶⁴ The FIR of each country is decided by the Council of ICAO normally on the basis of a “Regional Air Navigation Agreement” concluded after a “Regional Air Navigational Meeting” of the states of the area.⁶⁵

The FIRs of Greece and European Turkey, which are known as “Athinai FIR” and “Istanbul FIR,” were decided upon at the Third Regional Meeting of the European Civil Aviation Conference in 1952 and were slightly altered in the Fourth Meeting in Geneva in 1958. Both states participated in these conferences. According to the “Recommendations” in the “Air Navigation Plans” which were accepted by the Council of ICAO,⁶⁶ the limits of the Athens FIR were fixed at a point bordering the outer edge of the Turkish territorial waters, leaving Greece in control of both international and Greek

61. Article 68 of Con. ICAO.

62. Part II of Con. ICAO; became specialized agency of the U.N. on 13 May 1947. Thereafter called ICAO.

63. Con. ICAO, Annex 2. Rules of the Air, Annex 11. Air Traffic Services.

64. Con. ICAO, Annex 11, 2.2. Objectives for the Air Traffic Services.

65. Articles 49, 54 of the Con. ICAO, Annex 11, 2.1.1; Annex 2, 2.1.2.

66. *Report of the Third European-Mediterranean Regional Air Navigation Meeting*, Paris, February-March 1952, ICAO, Doc. 7280, EUM III; Council of ICAO 23-6-1952. *Report of the Fourth European-Mediterranean Regional Air Navigation Meeting*, Geneva, 28 January/21 February 1958, ICAO, Doc. 7880 EUM/IV; Council of ICAO 15 May 1958.

national airspace over the Aegean.⁶⁷ For twenty-two years, no objections were raised by Turkey as regards the determination of the Athens or Istanbul FIRs.

Nevertheless, in 1974, which was a landmark year in Greek-Turkish relations, Turkey accused Greece of having used the technical agreement of 1952 to establish sovereign control over the whole of the Aegean and to restrict Turkish military exercises in international airspace.⁶⁸ Turkey then attempted to change the existing arrangements over the Aegean by unilateral actions, in complete violation of the rules of the ICAO concerning objections related to the limits of a FIR.⁶⁹ With the issue of "Notices to Airmen" (NOTAM), Turkey tried to establish new "Position Reports" for the Istanbul FIR in the middle of the Aegean Sea. This report line was proclaimed for reasons of self-protection and self-defense of the Anatolian coast, especially after the events in Cyprus.⁷⁰ The establishment of such a zone "is questionable under international law."⁷¹ Moreover, according to the ICAO rules, "Position Reports" from aircraft to the "Air Traffic Control Center" are given only when they are crossing the common limit between two FIRs. Exceptionally, information can be reported only after an agreement between the two neighboring "Air Traffic Services Authorities."⁷²

Greece asked for the reestablishment of the *status quo ante* and issued NOTAM 1157/74 in which it declared that it could not accept responsibility for or guarantee traffic information or safety measures in the international air routes of the Aegean.⁷³ The international airspace over the Aegean was de-

67. Recommendation No.1 of the Paris Meeting, 1952; Recommendation No.9/2 of the Geneva Meeting, 1958. See also *Report of the Third European-Mediterranean Regional Air Navigation Meeting*, the Air Navigation Map, No.7. See map 2.

68. Wilson, in *Greece and Turkey: Adversity in Alliance*, 1984, p.112.

69. Article 54,94,95 of the Con.ICA0 and Annex 11, 2.1.2. Contrary to the approach adopted in the Aegean case, Con.ICA0 rules were followed by Turkey in 1978 in relation to the alteration of the Soviet FIR in the Black Sea in 1978. See also Yokaris, 1991, p.139.

70. Papacosma, *StudDipl*, 1984, p.309; Turkish NOTAM 714, 6 August 1974.

71. Shawcross and Beaumont, *Air Law*, 1991, iss.48, IV/2. Cuadra, *VJIL*, 1978, p.485; Cooper, in *Explorations in Aerospace Law*, 1968, p.317.

72. PANS-RAC, ICAO, Rules of the Air and Air Traffic Services, Doc. 4444, RAC 501/12, 2.17. Similar agreements have been signed between Greece and Bulgaria, and between Greece and Yugoslavia. A similar agreement signed between Greece and Turkey on 7 December 1971 is not yet in force, Sazanidis, 1979, p. 55. See also Yokaris, 1991, pp.146-147, 154-155.

73. See *infra*, p.113-114.

clared a "danger area" according to the ICAO rules which provide that a danger area is "an airspace of defined dimensions within which activities dangerous to the flight of aircraft may exist at specified times."⁷⁴ This declaration resulted in the suspension of all international flights over the Aegean.

During the negotiations, which commenced soon thereafter, Turkey initially asked for the establishment of an early identification zone fifty miles away from the Anatolian coastline and later sought joint control of all international airspace over the Aegean.⁷⁵ Then on 22 February 1980 Turkey cancelled its NOTAM and consequently Greece withdrew NOTAM 1157/74.⁷⁶ Nevertheless, the problems with the FIR had not finished. Turkish aircraft continued to enter within the limits of the Athens FIR without informing the Greek "Air Traffic Control Center."⁷⁷ Moreover, in 1982 the Turkish government issued a "rule for overflights over the border area."⁷⁸ According to this rule, a "Buffer Zone" was established in international airspace located within the limits of the Athens FIR.⁷⁹ The unilateral fixing of a zone within the limits of the FIR of another "Air Traffic Services Authority" constitutes a violation of the ICAO rules as mentioned above. While this rule remains dormant, it is likely to be given effect when circumstances are more favorable towards the successful implementation of Turkey's plans.⁸⁰

Another important issue concerns military aircraft flights in the Athens FIR. Turkish as well as American military aircraft tend not to submit flight plans to the "Air Traffic Services Authorities" of the Athens FIR. Greece has objected to this situation. The legal aspects of this problem can be summarized as follows:

As is mentioned in Article 3 (a), the Chicago Convention is "applicable only to civil aircraft and...not...to State aircraft." State aircraft are deemed to include *inter alia* military aircraft.⁸¹ Despite the fact that they are not obliged

74. Con. ICAO, Annex 2, Chapter 1, definitions. See also Rozakis, 1988, fn.377.

75. Sazanidis, *HRIRel*, 1980, pp.88-90; Sazanidis, 1987, p.30.

76. Rousseau, *RGDIP*, 1980, pp.912-913.

77. For a detailed analysis of this problem, see Rozakis, Ch., 1988, pp.395-404.

78. *TurOffGaz.*, 17900/16 February 1982, Decision No.8/5631/1982; See Sazanides, 1987, p.252.

79. Art.5.A.2.

80. For a detailed analysis of the problems and ICAO violations arising from the implementation of the "rule for overflights over the border area," see Yokaris, 1991, pp.157-158; Yokaris, 1996, pp.63-64.

81. Con. ICAO, Art.3(b).

to follow the Chicago Convention, state aircraft must have "due regard for the safety of navigation of civil aircraft."⁸² Under the rules of the ICAO, there exists a general obligation to submit flight plans to the authorities of each FIR where flights cross international borders.⁸³ There is also an obligation for co-operation between the military authorities and the "Air Traffic Services Authorities," not only in the national airspace but over the high seas as well, in order to avoid dangerous situations for civil air navigation.⁸⁴ In 1969, Greece asked that plans for all flights within the Athens FIR be submitted for approval.⁸⁵

Turkey and the U.S. refuse to submit flight plans on the basis of an ICAO regulation according to which, in the case of military aeronautical operations, there is an exception to the rules of the Chicago Convention because of the specific nature of the exercises.⁸⁶ But even in that case and in order to ensure the safety of the civil flights, the military authorities have to warn the "Air Traffic Services Authorities... whenever practicable" prior to the conduct of the maneuvers.⁸⁷ On this point, however, a distinction should be made between NATO and national Turkish military exercises. According to NATO regulations, NATO military aircraft during allied exercises are not obliged to submit flight plans but simply to cooperate with the civil authorities of a FIR in order to ensure the security of civil aviation.⁸⁸ As long as Turkish military aircraft are taking part in NATO exercises, they do not have to submit flight plans.⁸⁹ However, these NATO rules do not apply during Turkish national military exercises, where Turkish jets are obliged to follow the ICAO rules.

(b) NATO Air Operational Control

Before presenting a brief examination of this problem, it has to be made clear that the specific nature of a mutual defense organization, such as

82. Con. ICAO, Art.3(d).

83. Con. ICAO, Annex 2. ch. 3, 3.3.1.1.2.1.d and e.

84. Con. ICAO, Annex 11. 2.14.1, 2.15.1. See also ICAO Doc. 9114/A21-TE.

85. Royal Decree 170/6.2/20 March 1969; *ErK*, A' 50, 1969; See also AIP Greece RAC 1-2.1.4.1. of ICAO.

86. ICAO, Doc. 4444, RAC/ 501/ 12, 2-4.6.1.

87. Sazanides, 1987, p.116.

88. CEAC/ NATO, AC/ 92-WP/137 (3rd revised). NATO aircraft do not cooperate often with the authorities of the Athens FIR. Violations of air corridors used for civil aviation and the possibility of crashes between military and civil aircraft are not an unusual situation over the Aegean; for a full list of these incidents, see Sazanides, 1987, pp.88-94.

89. Sazanides, 1987, p.101.

NATO, creates obstacles for a study of the Aegean airspace problem from the point of view of international law. The secrecy of the obligations owed by each country towards its allies and, above all, the military and defense character of the rules and decisions taken within the Alliance do not leave much space for the application of principles of international law. Nevertheless, air operational control within NATO constitutes a serious problem in the relations between the countries forming the southeastern flank of NATO, namely Greece and Turkey. When both countries joined NATO in 1952, the headquarters of the Sixth Allied Tactical Air Force was established at Izmir. The headquarters were under the command of an American general with Greek and Turkish deputies.⁹⁰ The Greek commander had operational command and control over the whole airspace of the Aegean up to the limits of the Athens-Istanbul FIRs.⁹¹

When Greece withdrew from the military wing of NATO in 1974,⁹² Turkey asked for the reorganization of the Izmir headquarters.⁹³ In December 1977, the Alliance announced that the headquarters would be commanded by Turkish generals since, after the withdrawal of the Greek officers, it was "anomalous for U.S. generals to command only Turkish forces."⁹⁴ Thus, the Izmir headquarters became Turkish-NATO headquarters. Turkish attempts to resume the Izmir operational responsibilities as they applied before the Greek withdrawal, not only with respect to the Istanbul and Ankara FIRs but the Aegean airspace as well, did not succeed.⁹⁵

In September 1975, Greece made an informal application for its reintegration into the military command of NATO under a "special relationship."⁹⁶ A formal application was made in January 1977. During the negotiations, it was agreed that a new Greek-NATO headquarters would be established in

90. *Ibid.*, p.70.

91. Before 1964, the air defense of a small part of the Dodecanese islands was under Turkish control. Due to events in Cyprus in February 1964, Greece asked for and assumed responsibility over the whole FIR of Athens; Sazanides, 1987, p.71.

92. 28 August 1974. For the disadvantages of the Greek withdrawal, see Rozakis [2], 1979.

93. Meinardus, *EA*, 1982; Veremis, 1982, p. 75.

94. Wilson, in *Greece and Turkey: Adversity in Alliance*, 1984, p.110.

95. Sazanides, 1987, p.75.

96. See proposals of SACEUR General Haig and General Rogers between May 1978 and October 1980 in McDonald, *Prospects for Security in the Mediterranean*, 1988, Appendix, A, p.87.

Larissa, Greece.⁹⁷ The positive assessment of this plan by SACEUR General Alexander Haig for the International Military Staff of NATO was vetoed by Turkey which wanted first to establish the operational limits of the new headquarters in Larissa and then to accept the reintegration. Turkish proposals for the new operational limits concerned the possibility of temporary Turkish operational control over tactical command in airspace over Greek islands.⁹⁸ Greece, on the other hand, wanted recognition and application of the *status quo ante*.

Greece was reintegrated into the Alliance's military command in October 1980 on the basis of a plan prepared by Supreme Allied Commander Bernard Rogers.⁹⁹ This plan attempted to solve the problem of the delimitation of air operational control over the Aegean. Instability in Iran, the Soviet invasion of Afghanistan and the need to strengthen the southern flank of NATO were the reasons used by the Alliance in order to convince Turkey to accept the reintegration of Greece before the establishment of operational limits of the NATO headquarters in Larissa. The command boundaries of the Larissa headquarters were allowed to remain undelimited and, as is common in Greek-Turkish relations, the problem remains unresolved.¹⁰⁰

The legal aspects of the problem of air operational control over the Aegean, and more specifically of the displacement of the air-operational boundaries, are as follows: Land, territorial waters and national airspace comprise state territory over which a state exercises supreme and exclusive authority. A state cannot be obliged to limit this authority, unless this is restricted by customary law or by treaty.

Now the first and the foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another

97. SEVENATAF, Agreement between Generals Davos and Haig, May 1978; Roubatis, 1978.

98. *To Vima* (Athens newspaper), 16 March 1980, 5 and 21 October 1980; *Turkey, Greece and NATO: The Strained Alliance*, 1980, pp. 59-60.

99. See Valinakis, 1987, p. 117; Papacosma, 1984, pp. 311-316.

100. *NATO Today: The Alliance in Evolution*, pp. 88-89. It is doubtful whether certain unilateral decisions taken by Greece in relation to the Land Forces headquarters of NATO in Larissa, in 1992 and 1993, aim to re-establish a *de facto* Greek control over the Aegean on the lines of the pre-1974 period; *To Vima* (Athens newspaper), 18 October and 20 December 1992, 21 November 1993. The failure to resolve the NATO headquarters issue in Greece continued in 1995 and 1996.

State ... except by virtue of a permissive rule derived from international custom or from Convention.¹⁰¹

An important aspect of territorial authority, *dominium*, is that "no other state may exercise its power within the boundaries of the home territory."¹⁰² Turkey wants to assume operational responsibilities for NATO defense alliance purposes in a part of the Athens FIR. The Athens FIR is composed of international as well as Greek national airspace. As far as Greek national airspace is concerned, the Turkish claim is equivalent to the exercise of Turkish sovereign power within the boundaries of the Greek state. The handing over of command and control of Greek national airspace over the eastern Aegean to Turkey is tantamount to the handing over of two important elements of territorial authority that a state possesses: the right to control and defend its own territory.

Territorial authority, internal independence and liberty of action within its borders allow a state to arrange its defense and organize its forces on land, on the sea and in the air in any way it thinks fit, subject to restrictions imposed by rules of customary international law or by treaties binding upon it.¹⁰³ International law cannot oblige a state to accept any limitation of its territorial authority except by exercise of a state's own discretion.¹⁰⁴ Moreover, NATO recognizes the right of each country to control and defend its territory and provides that every member state is responsible for the defense of its land, territorial sea and national airspace.¹⁰⁵ Thus, Turkish claims aimed at the assumption of air operational control in the Aegean over Greek national airspace are contrary to international law.

Another important issue is a longstanding NATO policy according to which, for the purposes of the Alliance, the limits of the national airspace have to correspond with the limits of the territorial sea. Thus, for the purposes of the NATO military exercises, the Greek national airspace is only six and not ten miles.¹⁰⁶ According to this approach, Greece cannot complain of intru-

101. See the *SS Lotus*, 1927, PCIJ Series A, No 10, 1927, p.18.

102. Oppenheim's *International Law*, 1992, Vol.I, p.564.

103. *Ibid.*, pp.383-384.

104. Rozakis, 1988, p.419.

105. Decision MC 36/2 of the NATO Military Committee; Sazanides, 1987, p.71.

106. Decision MC 66/1, 1960, of the Military Committee of NATO. Sazanides, 1987, p.72; Papacosma, 1984, p.315; Rozakis, 1988, pp.421-423. See also debate in the Greek parliament between 22 and 24 October, 1980.

sions into its six to ten miles of national airspace during NATO exercises. Nevertheless, for national Turkish military exercises which are not within the NATO framework, the Greek national airspace is ten miles.¹⁰⁷ However, Greek Minister for Foreign Affairs Constantine Mitsotakis claimed in 1980 that this NATO policy was applicable only between 1960 and 1974. After Greece's reintegration into the military wing of NATO in 1980, this policy was no longer applicable over Aegean airspace.¹⁰⁸

(c) *The National Airspace*

The Aegean airspace problem is connected exclusively with the Greek national airspace. Consequently, the relevant domestic legislation to be examined is Greek legislation. In June 1931, a presidential decree concerning national airspace defined Greek national airspace as follows:

The state exercises complete and absolute sovereignty over the air space above its territory. The term "Greek territory" as used in this Act or in the regulations made pursuant thereto shall be deemed to include the territorial waters and the air space above those waters.¹⁰⁹

Pursuant to Article 9 of this decree and in accordance with the Paris Convention for the Regulation of Aerial Navigation which had already become part of Greek state legislation in 1921,¹¹⁰ Greek national airspace was fixed at ten miles, whereas the Greek territorial sea remained as it was:

The Hellenic Republic, having regard to Articles 2 and 9 of Act 5017 to regulate civil aviation...and to ratify the International Aviation Convention...has resolved and decreed as follows: The extent of the territorial waters referred to in Article 2 of Act 5017 shall be fixed at ten sea miles from the coast of the State.¹¹¹

107. Sazanides, 1987, p.101.

108. Mitsotakis, *Minutes of the Greek Parliament*, 23 October 1980, pp.743, 748.

109. Act No. 5017 of 3/13 June 1931 to Regulate Civil Aviation, U.N., Legislative Series, ST/LEG.SER.B/6, 1956, p.18.

110. Law 2569/1921, *ΕτΚ*, Α/26.4.1921.

111. Article 2 of the *Presidential Decree of 6/18 September 1931 to Define the Extent of the Territorial Waters for the Purposes of Aviation and the Control Thereof*, published in the *ΕτΚ* Α/325 of 1931; the exact number and date of the *Official Gazette of the Greek Government* is given because it has been alleged that this specific presidential decree was unearched and published only after 1974; for the text in English, see Rodino, 1980, p.9. See also art.191 of the Greek Code of Aviation Law.

Law 230 of 1936 which fixed the extent of the Greek territorial sea at six nautical miles explicitly provided that this was without prejudice to the determination of the extent of Greek national airspace.¹¹² Consequently, the Greek territorial sea was six nautical miles, whereas the national airspace for civil aviation and air policing purposes was four miles larger. In 1947, the Chicago Convention was ratified by the Greek state.¹¹³ In 1988, the Greek parliament approved the Code of Air Law which continues the status established in 1931 and considers national airspace as one of the component parts of the territory of the Greek state.¹¹⁴

4. CONTIGUOUS ZONE

Despite the fact that the origins of the contiguous zone predate the continental shelf and the exclusive economic zone, the two countries have never examined or discussed this regime. This is understandable since the contiguous zone was superseded by the new maritime zones created in recent years.¹¹⁵ The rather limited discussion of the contiguous zone in UNCLOS III was indicative of the views of the members of the international community.

(a) *Greek Position*

In Greece, there was some discussion on a theoretical level about the establishment of a contiguous zone.¹¹⁶ It was proposed that the Greek state could start exercising its control over this zone or over some parts of it gradually. The advantage of claiming a contiguous zone was considered to be the establishment of a link between the sea areas of the contiguous zone, where limited control would be exercised, and the areas of continental shelf beneath it, which are claimed by Greece. Nevertheless, this was not regarded as the only advantage. Greece gives special importance to Article 303(2) of the LOSC which speaks of the protection of objects found on the sea-bed of this zone which are of archaeological and historical importance.¹¹⁷ According to

112. See *supra*, p.11.

113. Law 211/ 28.2.1947, *EtK*, A/35/ 1947.

114. Law 1815/1988, *EtK*, A/250/ 1988; see *infra*, pp.266-268.

115. But see *Case Concerning the Delimitation of the Maritime Areas between Canada and France*, 1992, §69; on the history of the contiguous zone, see Oda, *ICLQ*, 1962, pp.131-153; see also Lowe, *BYBIL*, 1981, pp.159-169.

116. Economides, 1982.

117. Economides, *Greek-Turkish Relations: Opinions, Proposals, Views*, 1986, pp. 8-9; see also UNESCO Convention for the Protection of the World Cultural and Natural Heritage, 1972, *ILM*, pp.1358-1366.

this article, in order to control the removal of these treasures from the contiguous zone without approval, the coastal state would be free to presume that this act took place within its territory or territorial waters and therefore amounted to an infringement of its laws and regulations.¹¹⁸

(b) Turkish Position

The Turkish view is not very clear. Turkish officials have expressed the opinion that there is no official Turkish view regarding this subject.¹¹⁹ Thus, the only official Turkish approach in relation to this subject is the statement made by the head of the Turkish delegation at UNCLOS III. According to Mr. Kirca, the contiguous zone has lost its significance and has become obsolete: "the rights of the coastal State in such a zone are limited and do not amount to sovereignty and thus cannot affect the rights of States over the high seas."¹²⁰ Nevertheless, the establishment and breadth of the contiguous zone is related to the remarks made above with respect to the breadth of the territorial sea in narrow seas.

There is a gap in the LOSC in relation to the delimitation of contiguous zones between states with opposite or adjacent coasts. According to the Turkish view, the LOSC provisions on the delimitation of an EEZ and the continental shelf should be applicable by analogy to the delimitation of contiguous zones.¹²¹ According to Greek officials, the provisions to be applied in the case of the contiguous zone are the same as those which apply to the delimitation of the territorial sea. The reasons are the following: a) the nature and breadth of these two zones are very similar, b) they do not extend to a great distance from the coastlines, unlike the EEZ and the continental shelf which may extend to 200 miles or more, and c) the regime of the contiguous zone in both the Geneva Convention on the Territorial Sea and the LOSC was linked to territorial waters.¹²²

Finally, in relation to Article 303(2) of the LOSC, Turkey has expressed its concern with respect to the extent of protection given to these archaeologi-

118. See Michael, [2], 1983.

119. View expressed to the author by officials of the Turkish Embassy in Athens, 19 November, 1992.

120. UNCLOS III, Vol.XVII, part A, §168.

121. *Ibid.*, §170.

122. Personal information received from Constantine Economides of the Greek Foreign Ministry dated 21 November 1992.

cal and historical objects. The creation of rights of a territorial nature within the contiguous zone has been considered as worrisome.¹²³

5. CONTINENTAL SHELF

The "traditional" dispute in Greek-Turkish relations, which has also attracted international interest, is the delimitation of the Aegean continental shelf. The prospect of large oil fields, prompted by a Greek find off the island of Thassos in 1973 along with the onset of the first oil crisis and rapidly rising energy prices, drew the attention of both countries to the potentially oil rich subsoil of the Aegean. Conflicting Greek and Turkish claims in the eastern and northern Aegean continental shelf constitute the most serious problem after 1974. It is a problem that has led the two countries on two occasions to the brink of an armed conflict, once in 1975, when the MTA *Sismik* sailed over disputed areas west of the island of Lesbos, and a second time in 1987 when the threat of sending the same vessel into the Aegean created a dangerous situation. The first time, it was the Greek government's cool-headedness which averted the danger.¹²⁴ The second time, it was NATO's reaction and Lord Carrington's inestimable offer that saved the situation.¹²⁵

The delimitation of the continental shelf is the only aspect of Greek-Turkish relations which has become the object of interest and studies on both sides of the Aegean. Nevertheless, as regards the areas of the Aegean to be apportioned to each of the countries, the views of the two sides have not changed since 1974, despite the fact that since 1969 there has been a growing number of cases of delimitation of similar maritime areas which have been submitted to judicial organs.

The continental shelf regime emerged only after the Second World War,¹²⁶ a period during which the possibility of the existence of oil fields under the Aegean sea-bed was seen as somewhat of a midsummer night's dream rather than a real possibility. For this reason, applicable domestic legislation did not come into effect in the two countries until long after the Geneva Convention. Although the problem between the two countries developed in the late 1960s and early 1970s, when principles began to be crystalized in the

123. Pazarcı, H., *RBeldI*, 1984-1985, pp.251-252.

124. See *infra*, p.p.127-128.

125. See *infra*, p.240.

126. See in general Mouton, 1952; Hollick, *VJIL*, 1976, p.23ff.

field of customary international law, the inconstancy of the rules regulating the delimitation of the continental shelf in the specific circumstances of the Aegean prevented them from issuing specific laws.

In the period after 1974, the plethora of third-party delimitation adjudications and the work of the Third United Nations Conference on the Law of the Sea (UNCLOS III) raised the expectations of the two countries for new rules, satisfying their interests. For these reasons, the inaction continued. Thus, the domestic legislation in both countries as it concerns the continental shelf is not detailed.

(a) Greece

Greece, which participated in UNCLOS I and later became a party to the Geneva Convention on the Continental Shelf,¹²⁷ issued a petroleum Law in 1959.¹²⁸ While the continental shelf concept was adopted in the law's general proclamation, no precise definition was given.¹²⁹ In 1969, the granting of exploration and exploitation licenses necessitated the issuing of a decree-law concerning exploration and exploitation of the mineral resources in the seabed and the beds of lakes. According to Article 1:

The State shall also have the exclusive right to explore for and exploit all metalliferous ores, including hydrocarbons in the solid...

(b) On the sea-bed beyond the territorial sea, or in the subsoil thereof, where it adjoins or is adjacent to the continental or island coasts, up to a depth of 200 metres below the surface of the sea or an even greater depth where the superjacent waters admit of the exploration and exploitation referred to above, in other words in the continental shelf as agreed and determined in international conventions approved by law. Where the above continental shelf is adjacent to the territory of Greece and another State adjoining Greece or with coasts opposite to the Greek coasts, the rules of international law shall be applied in determining the limits of the continental shelf.¹³⁰

127. Law 1182/ 14 June/8 July 1972, *ErK*, 111 A/1972.

128. Petroleum 3948, 10 April 1959, *ErK*, A' 68, 17 April 1959. See S.G. Ivraakis, *RÇDI*, 1959, p.227.

129. See *Limits in the Seas*, No. 36, p.41.

130. Decree-Law No. 142/1969, in *The Law of the Sea: National Claims to Maritime Jurisdiction*, [Greece].

Thus, Greece adopted the definition given by the Geneva Convention on the Continental Shelf. The Mining Code which came into force in 1974¹³¹ and the law concerning the exploration, research and exploitation of hydrocarbons of 1976¹³² abolished the Petroleum Law of 1959 but retained the legal framework established by the decree-law of 1969.¹³³ The only significant event in the field of internal legislation since 1969 has been the ratification of the LOSC on 23 June 1995 by the Greek parliament.¹³⁴

(b) Turkey

The Turkish approach was similar in many respects. Initially, and before the creation of the Aegean Sea problem, the Geneva Convention on the Continental Shelf was acceded to by Turkey. In a note of the Permanent Representative of Turkey to the United Nations dated 9 May 1968, the information provided was as follows:

No legislation exists in Turkey on continental shelf and on exploitation procedures and research in natural resources of the seabed, ocean floor and subsoil. According to current regulations, permission for oil drilling within the continental shelf is subject to a decision by the Council of Ministers. In granting such permission, it is normally stipulated that those undertaking the drilling should conform to the provisions on the continental shelf convention.¹³⁵

Two laws issued later that year were not more specific. The petroleum and mining laws purported to apply "the principles of the Continental Shelf Convention."¹³⁶ Since that period, no other law has been issued in relation to the continental shelf regime.

6. EXCLUSIVE ECONOMIC ZONE

The maritime zone presently known as the exclusive economic zone (EEZ) was introduced in the early 1970s and was developed in UNCLOS III.

131. Article 196 of the Code; 210/1973, *ErK*, A' 277, 5 October 1973.

132. Law 468/1976, *ErK*, A' 302, 12 November 1976.

133. Doris, 1977, p.158.

134. Law 2321/23 June 1995, *ErK*, A' 136.

135. *National Legislation and Treaties Relating to the Territorial Sea...*, p.441.

136. Petroleum Law 3626/68; Mining Law 6309/68; see *Limits in the Seas*, No.36, p.117.

Its regime comprises the sea-bed and subsoil and covers the resources in superjacent waters as well as other activities connected mostly with economic exploration and exploitation of these resources.¹³⁷ Its breadth extends up to 200 miles from the baselines. This issue was ignored by domestic legislation in both countries since it was mainly concerned with the fishing rights in the seas which surround their coasts rather than with establishing extended maritime zones in the already limited space of the high seas of the Aegean.

(a) Greece

The limited Greek legislation which exists is exclusively centered on fisheries issues. No exclusive economic or fishery zone has been declared so far. Despite the decline in the Greek fishing industry as a result of the over-exploitation of coastal fish stocks during the 1970s and 1980s,¹³⁸ a Greek exclusive fishing right exists only within the six-mile Greek territorial sea. Thus, with Act No. 652 of 1915, vessels with foreign nationality were permitted to carry on fishing of all kinds on the condition that Greek vessels "are permitted to carry on fishing in the waters of the States to which such foreign vessels belong."¹³⁹ Moreover, Article 401 of the Greek penal code restricts the right of fishing within the Greek territorial sea to Greek nationals and those who have permission by the Greek state to fish.

Since Greece is a member of the European Union and one of the responsibilities of the European Commission is to regulate fisheries issues,¹⁴⁰ existing EEC/EU legislation needs to be examined. Regulation 101/76 laid down a Common Structural Policy for the Fishing Industry and called for an extension of members states' fishing limits in the North Sea and North Atlantic. However, it added that this was "without prejudice to similar action being taken for other fishing zones within their jurisdiction such as the Mediterranean." When the Commission made its proposals in 1976 for extending fishing limits, it said that it would put forward in due course proposals for an extension of the limits applying for member states' Mediterranean coasts.¹⁴¹

137. See in general Extavour, 1979; Attard, 1987; Kwiatkowska, 1989; Vicuna, 1989.

138. Imports of 360 million drachmas in 1970 to 10.2 billion drachmas in 1985, *Avghi*, 10 May 1987.

139. Art.1 of Act No. 652, 27 February/10 March 1915 regulating fishing in Greek coastal waters, Rodino, 1980, pp.3-4.

140. See in general Churchill, 1987.

141. Communication from the Commission to the Council, (1976), 50.

Such action has not yet been taken.¹⁴² Finally, in 1990 the Commission published a discussion paper outlining a common fisheries system in the Mediterranean.¹⁴³

(b) Turkey

The Turkish approach concerning fisheries issues and the EEZ is different from that of Greece. In 1964, a six-mile belt contiguous to the six-mile territorial sea was proclaimed by Turkey for the exclusive use of its nationals in regard to fisheries.

In areas contiguous to Turkish territorial waters and extending up to 12 nautical miles from the baselines used for the measurement of territorial waters, the territorial waters regime is in force regarding fishing and exploitation of living resources.¹⁴⁴

It is important to note that this limit applied exclusively in the Aegean since in the Black Sea and the Mediterranean the limit of the territorial waters was already fixed at a distance of twelve miles from the Turkish coasts. In 1986, Turkey proclaimed an exclusive economic zone of 200 miles from its coastlines in the Black Sea. The boundaries of this EEZ have not yet been delimited.¹⁴⁵

The domestic legislation of the two countries concerning the maritime zones of the Aegean was not an abstract exercise. It was influenced by other states' practice, international conventions, judicial cases and the international *opinio juris*. Political considerations and national interests exercised a significant influence. The following part will examine the historical-political framework as well as the legal parameters within which the Greek-Turkish conflict developed after 1973.

142. See Churchill, 1987, pp.69-71. See also Kariotis, *MP*, 1990, p. 11.

143. *Bul.EurCom*, 1990, No.7/8:75-76; for more, see Churchill, *ODIL*, 1992, pp.147,153.

144. Art.8, Territorial waters law, 476, 15 May 1964. See also Zotiades, 1975, p.18.

145. See *Limits in the Seas*, 109, p.2.



PART I
THE PERIOD UP TO 1973



2. The Historical and Legal Framework of the Greek-Turkish Dispute

INTRODUCTION

The Aegean dispute often transcends legal or political arguments. It is related to the way the two nations, which now inhabit the coasts of that sea, feel towards each other. It is related to their ancient animosity, and at the same time it is also connected to the traditional links of friendship that can be created between peoples living together for so many years. But most of all, the Aegean is one of two areas, the other being Cyprus, where the two nations have to show that they can work towards a new era of peace and cooperation.

The fact remains that the Aegean dispute is a complicated question, and a knowledge of the historical background of Greek-Turkish relations is very important in order to understand it. The importance of this background lies not just in the march of the two nations through history since they first met in the Anatolian peninsula almost a millennium ago. The progressive incorporation of all the Aegean islands into the Greek state during this century is an important fact that has to be taken into consideration. But the most significant issue is a treaty, that of Lausanne, which was signed in 1923. It is undoubtedly one of the rare cases in Europe where two countries consider a convention signed a few years after the First World War not only as valid between them but also as a cornerstone in their relations. As will be shown in the following chapters, one of the most common accusations leveled by the two countries against each other is either that they have violated the Lausanne Treaty or that they have upset the equilibrium established by it.

1. FIRST FOOTSTEPS OF GREEKS AND TURKS

The first inhabitants of the Aegean islands were pre-Hellenic tribes known today as *Carians* and *Leleges*.¹ The first settlement of Greeks in the Aegean dates at least from the fifteenth century B.C.² Since that period, all

1. Thucydides, *Historiae*, A, I. 4-I. 8; [Herodotus], *Herodoti Historiae*, A, I. 171.

2. *History of the Greek Nation*, Vol. A, pp.260-261.

the Aegean islands have had a predominantly in Greek population. Nevertheless, the islands suffered many invasions and were conquered by Persians, Romans, Arabs, Crusaders, Venetians and Franks. The first Turks appeared in the Aegean in the eleventh century A.D. The Aegean islands were conquered by the Ottoman Turks after the fall of Constantinople and the occupation of the Eastern Roman Empire, between 1456 and 1669 with the exception of the island of Tinos (Cyclades) which was taken in 1715.

The Greek War of Independence in 1821 resulted in the incorporation of all the Cyclades, Euboea and the Sporades into the Kingdom of Greece. The prosperous Greek-inhabited islands along the Anatolian coast, the Dodecanese group and Crete, as well as Thessaly, Epirus, Macedonia and Thrace, remained outside and under Turkish-Ottoman rule. In the new kingdom, the desire to liberate more and more Greeks from Turkish rule was inevitable. For almost 100 years (1831-1926), the "Greek people were passionately attached to a foreign policy inspired by the *Megali Idea* (Great Idea), the independence and unification of all the Greeks,"³ with the ultimate aim the re-establishment of the Eastern Roman/Byzantine Empire.⁴

2. THE BALKAN WARS

The outcome of the Balkan Wars of 1912-13 marked the end of Turkish rule over the Aegean islands. On 17 October 1912, the first Balkan War began and Greece annexed Crete which had declared its desire for union with the "motherland" since 1908. Two days earlier, the Ottoman Turks, "preferring an Italian to an eventual Greek occupation of the islands,"⁵ had signed with Italy a treaty at Ouchy, Lausanne. According to the terms of this treaty, Italy was to occupy the Dodecanese until Turkey evacuated Cyrenaica and Tripoli.⁶ However, the outbreak of the Balkan Wars and Turkish delay were used by the Italian government as an excuse to keep the Dodecanese islands which had been occupied by them since the Italo-Turkish War of 1911-1912.⁷

3. Psomiades, 1968, p.18.

4. On the *Megali Idea*, see Campbell and Sherrard, Chapter 4; Dragoumis, 1927; *The Turkish-Greek Relations and the Great Idea*, 1985.

5. Petsalis-Diomidis, 1978, p.29.

6. CTS, 217, p.137; Childs, 1990, pp.174-240.

7. Petsalis-Diomidis, 1978, p.29; Jelavich, 1988, Vol. II, p.97. In December 1912, Lloyd George told Greek Prime Minister Venizelos that Greece could organize a revolu-

Immediately after the outbreak of the Balkan Wars, Greek naval forces, which had established supremacy over the Aegean Sea, occupied the islands of the northern Aegean, Lemnos, Thassos, Agios Eustratios, Imbros, Samothrace, Psara and Tenedos by 1 November 1912 and Ikaria, Lesbos and Chios by 2 December 1912. The island of Samos was already semi-independent and was not officially occupied by Greece, despite the proclamation of a local assembly for union with Greece, until 1 March 1913, in order to avoid diplomatic complications.⁸

The *fait accompli* of the Balkan Wars was confirmed in a peace settlement, held in London in May 1913. Greece annexed Crete but, according to Article 5 of the Treaty of London, the future ownership of all the Ottoman islands in the Aegean Sea, except the island of Crete, was left to the decision of the Great Powers.⁹ By a note of 13 February 1914 communicated to Athens, the Powers ceded all the Aegean islands to Greece, with the exception of the Dodecanese group which was under Italian rule and Imbros, Tenedos and Kastellorizo which remained under Turkish control.¹⁰ Nevertheless, the Powers were reluctant to enforce their decision and Turkey, encouraged by German support, refused to accept the note which would have meant recognition of the Greek sovereignty over the other Aegean islands. Direct negotiations between Prime Minister of Greece Eleftherios Venizelos and the Grand Vizier Said Halim were postponed in July 1914 and the two countries started to reinforce their fleets.¹¹

3. THE TREATY OF SEVRES AND THE TREATY OF LAUSANNE

During the First World War, Greece committed its troops alongside those of the Allied Forces, whereas Turkey entered the war on the side of the Central Powers. As a consequence, Greece found itself amongst the victors. This situation encouraged a further implementation of the *Megali Idea* in the mind of all the Greeks. Peace was made with the Ottoman Empire in the Treaty of Sevres signed in August 1920. This confirmed the allocation to Greece of the Aegean islands which were already under Greek control, in-

tion in the Dodecanese islands in order to stop these islands from reverting to Turkish control according to the plans of Great Britain. See Smith, 1973, p.18.

8. *History of the Greek Nation*, Vol. IA, p.302.

9. *BFSP*, 107, 1914, p.656.

10. See the exchange of notes in *CTS*, 219, p.287.

11. Petsalis-Diomidis, 1978, p.31; *History of the Greek Nation*, Vol. IE, pp.14-15.

cluding Imbros and Tenedos situated at the entrance of the Dardanelles,¹² while the Dodecanese islands, including Kastellorizo, were ceded to Italy. During the 1920 peace conference, an agreement was signed between the prime minister of Greece, Venizelos, and the minister of foreign affairs of Italy, Tomasso Tittoni, in which it was agreed that the Dodecanese islands would be handed over to Greece. Rhodes, however, was to remain for at least another five years under Italian control.¹³

In 1919, the Greek Army landed in Smyrna and occupied part of the western areas of Asia Minor which were mostly populated by Greeks. The landing was made to enforce a mandate given to Greece by the Entente. The defeat of the Greek forces in Asia Minor, in August 1922, and the occupation of the western side of the Anatolian peninsula by the Turks in the following month forced the Allies to negotiate a fresh settlement at Lausanne three years after the Treaty of Sevres. During the Lausanne Conference, Greece and Turkey were left to arrive at a mutually acceptable boundary settlement. In the discussions of the second sub-commission of the First Commission, the Turkish delegate, Ismet, pointed out that the Aegean islands, although overwhelmingly inhabited by Greeks, were of special interest to Turkey since they were of vital importance to the peace and security of Turkey as well as being geographically dependent on Asia Minor. He consequently asked that Turkish sovereignty be recognized over Imbros, Tenedos and Samothrace and that a neutral and independent political existence be given to the islands of Chios, Lemnos, Lesbos, Samos and Ikaria. He asked that the latter islands be demilitarized because of the implications for Turkey's security. In his opinion, they should be united economically with Asia Minor.¹⁴

The Greek delegate, Venizelos, agreed to the demilitarization of the islands but insisted that all the islands, including Imbros and Tenedos, should remain Greek because of their predominantly Greek population, while Ismet emphasized that Turkey's sovereignty over Imbros and Tenedos was not a subject for discussion at the conference.¹⁵ Lord Curzon, the president of the

12. *BFSP*, 113, 1920, p.471, art. 84. For the legal status of the straits prior to the Treaty of Sevres, see Headlam-Morley, in *Studies in Diplomatic History*, 1930, pp.212-253.

13. 29 July 1919, *CTS*, Vol.225, pp.442-445; *History of the Greek Nation*, Vol. IE, pp.85,143.

14. For more, see Davison, 1990, pp.225-231.

15. Great Britain, *Parliamentary Papers* 1923, Turkey, No.1, Cmd. 1814. "Lausanne Conference on Near Eastern Affairs, 1922-1923," (Proceedings), London, 1923, pp.95-100. See also *Eleftheron Vima*, 19-3-1923.

sub-commission, later replied that only the sovereignty over Imbros and Tenedos was subject to the negotiations of the conference. No such question could be raised in relation to the other Aegean islands.¹⁶

The reasons advanced by the two countries during the Lausanne Conference to justify their claims for the allocation of the Aegean islands are illustrative of the way in which they view these islands today. Greece advanced claims which had both historical and ethnic bases and relied mainly on the fact that the inhabitants of the islands were ethnic Greeks. Turkey based its arguments on grounds of security and peace for the Anatolian peninsula. Since then, this security concept has often been used by Turkish officials.¹⁷ The dependency of the islands on the Asia Minor coast was also mentioned. It is an argument which has been heard several times since then, the most recent being in 1993, when the Turkish government proposed to connect the Greek islands with the Turkish electrical grid.¹⁸

The issue of the islands was also connected with the status of the straits. Thus, Ismet insisted that Imbros, Tenedos and Samothrace "form an integral part of the Dardanelles, [and] should be restored to Turkey."¹⁹ In January 1923, the Allied Powers proposed that the defense of the Dardanelles straits required the demilitarization of the islands of Samothrace, Imbros, Tenedos and Lemnos. They also decided that the two islands of Imbros and Tenedos should be returned to Turkey despite the fact that the island of Imbros contained no Turkish population (9,207 Greeks), that Tenedos contained only a small Turkish minority (1,200 Turks to 5,420 Greeks) and that both had been under Greek control for over a decade.²⁰ Also, stringent provisions were introduced by which the islands of Lesbos, Chios, Samos and Ikaria would be partly demilitarized to ensure that they could not be used as bases from which a military, naval or air attack could be made upon Turkey.²¹ Turkey accepted these proposals on 4 February 1923 and agreed to establish a local admini-

16. Ibid., p.169.

17. See *Turkish Officials Speak on Turkey's Aims*, 1983, chapter: "False pretexts on the islands' defensive measures."

18. Yilmaz, *Hurriyet*, 19 April 1993.

19. Great Britain, *Parliamentary Papers* 1923, Turkey, No.1, Cmd. 1814. "Lausanne Conference on Near Eastern Affairs, 1922-1923," (Proceedings), London, 1923, pp.280-282.

20. For the situation regarding human rights in Imbros and Tenedos, see Chapter 10, pp. 359-362.

21. See *supra*, fn.19, pp.432-433; Treaty of Lausanne, art.13; *LNTS*, 28, p.12.

stration for the inhabitants of Imbros and Tenedos.²² The terms of the Lausanne Treaty read as follows:

Article 12.

The decision taken on 13 February, 1914, by the Conference of London, in virtue of Articles 5 of the Treaty of London of 17/30 May, 1913, and 15 of the Treaty of Athens of 1/14 November, 1913, which decision was communicated to the Greek Government on the 13 February, 1914, regarding the sovereignty of Greece over the islands of the Eastern Mediterranean, other than the islands of Imvros, Tenedos and Rabbit Islands, particularly the islands of Lemnos, Samothrace, Mytilene [Lesvos], Chios, Samos and Nikaria, is confirmed, subject to the provisions of the present Treaty respecting the islands placed under the sovereignty of Italy which form the subject of Article 15.

Except where a provision to the contrary is contained in the present Treaty, the islands situated at less than three miles from the Asian coast remain under Turkish Sovereignty.

Article 14.

The islands of Imbros and Tenedos, remaining under Turkish sovereignty, shall enjoy a special administrative organisation composed of local elements and furnishing every guarantee for the native non Moslem population in so far as concerns local administration and the protection of person and property...

Article 16.

Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognised by the said Treaty, the future of these territories and islands being settled or to be settled by the Parties concerned.

The provisions of the present Treaty do not prejudice any special arrangements arising from neighbourly relations which have been or may be concluded between Turkey and any limitrophe countries...

In September 1924, the provisions of the Lausanne Treaty were placed under the guarantee of the League of Nations. The Aegean islands were, for

22. Treaty of Lausanne, art.14.

the first time in 3,500 years of history, isolated economically, socially and culturally from Asia Minor.

As regards the Dodecanese islands, following the defeat of the Greek army in Anatolia, Italy announced its intentions of keeping them and repudiated the Venizelos-Tittoni agreement.²³ It is interesting to note that Turkey opposed the secession of the Dodecanese islands to Greece even though it was apparent that Italy wanted the islands in order to strengthen Italian national interests in the eastern Mediterranean and did not want to give them to Turkey.²⁴ Thus, Ismet told Italian Delegate Geroni that "under no condition would Turkey want the secession of the Dodecanese islands to Greece."²⁵ In the meantime, Greece continued to claim the islands as part of its national patrimony although it approved for the time the secession of the islands to Italy.²⁶ In the end, Turkey, by Article 15, renounced in favor of Italy all rights and title over the Dodecanese islands, including Kastellorizo.

Article 15.

Turkey renounces in favour of Italy all rights and title over the following islands...Stampalia, Rhodes, Calki, Scarpanto, Casso, Tilos, Nisyros, Kalymnos, Leros, Patmos, Lipsos, Symi and Cos, which are now occupied by Italy, and the islets dependent thereon, and also the island of Castellorizo.

Another important element of the Lausanne Treaty was that it established a delimitation of certain parts of the territorial waters of the two countries. The only maritime area where boundaries were specifically agreed upon was the sector south of the land frontier between the two countries in Thrace. There, the boundary was a line drawn according to the principle of equidistance or rather continuing the median line of the river Evros, which constitutes the frontier between the two countries, and extending it to a distance of three miles.²⁷

23. Psomiades, 1968, p.54.

24. See in general Alexandris, 1947.

25. Garroni to Mussolini, 29 November 1922, *I Documenti Diplomatici Italiani*, 1952.

26. For more, see chapter 11.

27. Protocol of the Delimitation Committee for the Drawing of the Terrestrial Boundary, art.2, §2, signed in Athens, 3 November 1926; see also *RGDIP*, 1926, p.319, annex, map 7, p.488. Also Law 939/79, *ETK*, 149/ 6 June 1979.

Between this point and south of the island of Samos, there is no agreed boundary between the two countries. Only in the British edition of the acts of the Lausanne Treaty of 1923 do the maps that accompany the text give the exact line which delimits the territorial sea between the two countries.²⁸ Nevertheless, Greece and Turkey accepted in practice that there was a median line territorial sea boundary based on custom between the two countries in the narrow maritime spaces between the islands and the Anatolian coast.²⁹

The Lausanne settlement provided the basis for peace in the region. A compulsory exchange of the Greek and Turkish minorities (189,916 Greeks and 355,635 Turks)³⁰ between the two countries took place. To these numbers should be added another 1,300,000 Greeks who fled Asia Minor prior to the constitution of the Lausanne Commission.³¹ Though a tragic experience for the individuals concerned,³² this mass exodus resulted in a much smaller minority presence in both countries and led to the adoption of a different approach to the problem of protecting their human rights. During that period, it seemed that the small minority populations that remained in each country, the ethnic Greeks in Istanbul and the Muslims in Western Thrace, would act as a bridge between the two nations and could work to the advantage of peaceful relations and greater stability.

Furthermore, Greece acquired an ethnic homogeneity and restored the unity of Hellenism within a unified state. This constituted a historical fact of great significance. The end of the dispersion of Hellenism between two continents and the general coincidence between the ethnological and territorial limits of the Greek people brought an end to the policy of the *Megali Idea*.

28. See maps 4 and 10 of the British document of the Lausanne Treaty, Cmd. 1929 of 1923; Papadimitriou, 1975, p.19.

29. Katsoufros, in "Le différend Gréco-Turc," 1985, p.83.

30. Ladas, 1932, pp.438-439.

31. Exact figures of these Greek refugees cannot be given. According to a census made by the Patriarchate in Constantinople in 1912, the Greeks in Asia Minor were 1,782,582. The first official census in Greece was made in 1928 and gave the number of refugees as 1,221,849. By that time, many refugees had died from their sufferings and epidemics, while many thousands had emigrated to the U.S., France, Egypt and other countries. For more information, see Ladas, 1932, pp.440-442; *History of the Greek Nation*, Vol. IE, pp.246-247, Shaw and Shaw, 1977, Vol. II, p.373. Assertions made by Ambassador Haluk Bayulken, that there were four million Turkish refugees compared with 1.2 million Greeks, cannot be given serious consideration. See Bayulken, *TRQD*, Winter 1985-86, p. 178.

32. See e.g. in general Hirschon, 1989.

The Greek minorities in Constantinople and Northern Epirus, Albania, had rights which were, theoretically at least, protected by international treaties. The last substantial areas of Greek population, Cyprus and the Dodecanese islands, which remained outside the boundaries of the Greek state were not under Turkish control and this was not felt to be a potential source of difficulty. Thus, the major objective of Greek foreign policy became the security of the state rather than the liberation of those parts of the nation outside of Greek territory.

Simultaneously, Turkey, "by appreciating that it would be unavailing to insist on some of her claims in Thrace and the Aegean Islands...won a treaty that yielded positive results and established the basis for a stable peace between herself and the signatory powers."³³ As it was observed:

With Turkey retaining only the three islands at the mouth of the Dardanelles, one sees how comprehensively "Greek" was the Aegean conceived to be in the territorial settlement in the Treaty of Lausanne. It was as if the Turkish boundary was to be the coast of the mainland (save for those three islands) and, territorially, the Aegean was to be Greek.³⁴

It is not known if the signatories to the Lausanne Treaty expected it to last for so long. One has to wonder if Turkey would have ever signed the Lausanne Treaty if it had been able to foresee the developments that were to take place in the forthcoming years in regard to the law of the sea, chiefly the enormous extension of maritime rights of coastal states beyond the area of adjacent sea known as the territorial sea.³⁵

4. GREEK-TURKISH RELATIONS UP TO THE SECOND WORLD WAR

In the period following the Lausanne Treaty, the two countries formulated and implemented their new foreign policies, and during the inter-war years there was a Greek-Turkish rapprochement. This rapprochement came about because both countries had common security interests. Both shared a growing mistrust of Benito Mussolini's professed ambitions in the eastern Mediterranean. In 1930, Greece and Turkey were brought together in a pact

33. Psomiades, 1968, p.107.

34. Bowett, 1979, p.251. Lausanne Treaty, [1923], art.1, fixes the Turkish boundary "jusqu'à la mer Egée."

35. Wilson, *Greece and Turkey: Adversity in Alliance*, 1984, p.93.

of friendship.³⁶ This was the only time that the Aegean islands have occasioned an improvement of Greek-Turkish relations.³⁷ Four years later, in 1934, Turkey entered into the Balkan Entente Treaty signed in Athens with Greece, Yugoslavia and Romania, under which each guaranteed the territorial integrity and independence of the others.³⁸

The importance of this rapprochement cannot be overemphasized. After ten years of war, the two countries wanted to concentrate on internal reconstruction. Greece was facing the chaotic problem of settling over one million refugees, while Turkey was using all its efforts to secure a difficult social revolution. The presence of two strong and popular leaders, Mustafa Kemal Ataturk and Venizelos, capable of negotiating and carrying out these unpopular agreements, was another decisive factor. The role of Venizelos was of paramount significance. The basis for the rapprochement was the recognition by Ataturk that "Turkey needed Greece to maintain her position at the Straits and that the defence of Greece and the Greek islands was necessary for Turkey's security."³⁹ Nevertheless, this rapprochement was a political decision conducted by the two governments and never embraced by the two peoples.⁴⁰

In July 1936, the signatories of the Lausanne Treaty, at the invitation of Turkey, gathered in the Swiss town Montreux and promulgated a new Convention Regarding the Regime of Straits and the status of the islands at the entrance of the Dardanelles.⁴¹

(a) A Question Relating to Greek National Airspace

It was in the period between 1931 and 1936 that Greek domestic legislation concerning the territorial sea and the national airspace was established, and it remains unchanged to this day. The issues underlying these two regimes cannot be fully examined in this section of the discussion, since they form an integral part of the so-called Aegean problem as it exists today between the two countries. Certain questions, however, were raised during this

36. Palmer, 1991, p.102-103; Kinross, 1964, pp.458-460. *LNTS*, 125, p.9.

37. See *The Times* (London newspaper), leading article, 12 June 1930.

38. *LNTS*, 153, p.155; Woodhouse, 1986, pp.220-221.

39. Psomiades, 1968, p.109.

40. For more about this period, see Kitsikis, 1981, pp.17-34.

41. *LNTS*, 173, p.215. For the Montreux Treaty, see Pazarcı, 1986; Economides, 1989. For a more general evaluation of the Straits, see also Rozakis, and Stagos, 1987; also Alvarez, 1980, ch. III, "The Dardanelles as an Issue in Great Power Relations."

period mainly in connection with the establishment of these two areas of Greek national jurisdiction.

The first problem concerns the existence of a national airspace of ten miles not corresponding with the territorial sea beneath, a situation which is unique in the international community.⁴² However, when the ten-mile national airspace was brought into force, Greece did not feel any need to justify it since almost no objections were raised at that time. The Greek arguments concerning its justification are in a sense retroactive since they date from 1974, when the problem was first raised by Turkey.

The first argument is that Greece had the right to extend its territorial sea to ten miles in 1931. Since Greece, as owner of one of the world's largest commercial fleets, was not willing to institute measures that could lead to the restriction of the freedom of navigation,⁴³ the Greek government preferred to extend its jurisdiction to an element of the territorial sea zone, namely the airspace.⁴⁴ According to Greek domestic legislation, the ten-mile national airspace is part of the territorial sea regime which, for special purposes, has a different extent than a territorial sea for general purposes.⁴⁵

A second theory, advanced mainly by the ex-director of the legal department of the Greek Ministry of Foreign Affairs proposes the existence of two territorial seas.⁴⁶ The first territorial sea was established in 1931. It extends to ten miles and has a special character since it is restricted to two of the functions that a state possesses within a territorial sea, namely to aviation and policing/security. The second territorial sea, which has a breadth of six miles, was established in 1936. It is a territorial sea of general character and embraces all the functions that a state possesses within such a zone, both in the sea and the air up to a distance of six miles.

When the Presidential Decree establishing the limits of the national airspace was adopted in 1931, existing international air law was in its infancy.

42. See Oppenheim, 1992, p.652, fn.3; but see Yokaris, 1984, p.70, fn.29. See *supra*, pp.114-119. About the Principle *qui dominus est soli, dominus est coeli et inferorum*, see Maniatopoulos, *Droit Aérien*, 1946, pp.26-20.

43. Halkiopoulos, in *Greek Problems in the Air, from a Diplomatic, Military Technical and Legal Point of View*, 1989, pp.32-33.

44. Yiokaris, 1984, p.19.

45. Katsoufros, in *Le différend Gréco-Turc*, 1985, p.84.

46. Economides, *DDDP*, 1985, p.174; *Greek-Turkish Relations: Opinions, Proposals, Views*, 1986, p.9;

Some years earlier, the Paris Convention of the Air of 29 June 1910 had failed to determine whether there existed a principle of the freedom of the air or that of sovereignty over the air.⁴⁷ The Paris Convention relating to the Regulation of Aerial Navigation of 1919 provided that:

The...Parties recognize that every Power has complete and exclusive sovereignty over the airspace above its territory. For the purpose of the present Convention, the territory of a state shall be understood as including the national territory...and the territorial waters adjacent thereto.⁴⁸

The same article appeared in the Ibero-American Convention of Aerial Navigation signed in Madrid in 1926, but there was no reference to territorial waters in the Pan-American Convention on Commercial Aviation signed in Havana, Cuba, on 28 February 1928. One question raised in relation to these regulations is whether they were already part of customary international law in 1931 when the Greek law was enacted. Another point is that the airspace was regarded as an annex of the subjacent territory. The territorial sea was assimilated to other parts of the territory of a sovereign state and, consequently, state sovereignty extended to the airspace over the territorial sea.

At that time, the law of the sea had not yet been codified so the nature and the extent of the rights over the territorial sea regime was undefined. From this point of view, if the law concerning Greek national airspace is regarded as establishing a second territorial sea, its expansion to ten miles is acceptable under international law only to the extent that a territorial sea of ten miles was acceptable during that period.

If, on the other hand, the ten-mile national airspace is regarded as another regime, separate from the territorial sea or the land territory in which the state can exercise its jurisdiction even above the high seas, then the following remarks can be made. None of the Conventions regulating the air navigation contained any provisions confirming the freedom of flight over the high seas. However, the Aeronautical Commission of the Paris Peace Conference in 1921 had stated that "it is only where the column of air lies over a *res nullius* or *res communis*, like the sea that the air becomes free" and that "the

47. "Report of the Legal, Commercial and Financial Sub-Commission to the Aeronautical Commission," *Recueil des Actes de la Conférence de la Paix*, Paris, Part. VII. A (1), Aeronautical Commission, pp.428-429.

48. Paris Convention of the Aerial Navigation, art.1, 1919.

airspace above the sea is as free as the sea itself.”⁴⁹ Moreover, the International Commission for Air Navigation at its Extraordinary Session in 1929 “recognized that flight over the sea outside territorial waters is free.”⁵⁰ Although doubts can be raised again as to whether these views, not expressed in the Conventions, were part of customary international law, it can be said that the expansion of national airspace in 1931 as a separate regime from the territorial sea was at best on the borderline of international law.

(b) A Second Question Concerning the Greek Territorial Sea

As has already been seen, in 1936, Law 230 established the extent of the Greek territorial sea to a distance of six miles from the coast. The adoption of a six-mile limit in 1936 was questionable under international law. The cannon shot limit to a distance of three miles offshore had been considered since 1840 as part of customary law for the delimitation of the territorial sea.⁵¹ Even when the range of artillery went far beyond three miles, this limit continued as an independent standard supported by state practice.⁵²

However, in the period between 1882, when long debates took place in the Institut de Droit International, and 1930, the period of the Hague Codification Conference, the issue of whether the territorial sea should be fixed at three or six miles arose.⁵³ In the Hague Codification Conference, the divergence of views on this point led to the non-adoption of the draft Convention,⁵⁴ a fact which, according to Gidel, created uncertainty as to the limit of the territorial sea.⁵⁵ Even after the Second World War, in 1950, the International Law Commission (ILC) considered that the topic of the extent of the territorial sea should be avoided for the time being, because of the different opinions on this issue.⁵⁶ Therefore, it seems that in 1936, a period when state practice was not uniform, the six-mile territorial sea limit adopted by Greece

49. *Supra*, fn.47.

50. International Commission for Air Navigation, Extraordinary Session, June 1929, draft minutes, p.217, annex K, under art.1.

51. O’Connell, 1982, Vol. I, p.135.

52. During the American Civil War, the range of artillery exceeded three miles, in McNair, 1956, Vol.I, p.336.

53. See Crocker, 1919, p.622.

54. O’Connell, 1982, Vol.I, p.159.

55. Gidel, 1934, p.152.

56. *YBILC*, 1950, Vol.I, p.178, Vol. II, p.46.

was not in itself unlawful, but it was not part of customary international law either.⁵⁷

5. THE SECOND WORLD WAR AND THE TREATY OF PARIS

The true nature of Greek-Turkish relations was shown during World War II. In 1940, Mussolini's Italy launched an attack against Greece from Albania. Poorly equipped Greek troops managed to push the invading Italians back to Albania until, in April 1941, Germany launched a separate attack on Greece's northern borders. The defense of so many fronts meant that Greece was unable to resist and finally capitulated to the Axis powers. During the same period, and despite its commitments to Greece under the Treaty of Friendship, Turkey insisted that it did not have the wherewithal to fight a war and thus wanted to avoid any action which might provoke the Axis.⁵⁸ Thus, Turkey declined to participate actively in the war and adopted a policy of neutrality.⁵⁹

Nevertheless, before Italy's attack on Greece, Turkey had asked Britain and France for military help to invade the Dodecanese islands which were under Italian rule.⁶⁰ After the outbreak of the war between Greece and the Axis powers, Turkey also asked for the right to control some Greek ports of the eastern Aegean islands as well as of the city of Thessaloniki.⁶¹ In April 1941, when the Greek government was preparing to withdraw and continue the war from the island of Crete, the Turkish foreign minister, Sükrü Saracoglu, proposed to the Nazi government that Turkey take control of the islands of Chios, Samos and Lesbos until the end of the war. The German Ministry of Foreign Affairs responded that the German forces had already occupied these

57. See view expressed by Gidel in the works of UNCLOS I that "with the exception of the four mile limit in Scandinavian waters and the six mile limit accepted for certain Mediterranean States, claims to a territorial sea of more than three miles" did not stand on the same footing as the three mile limit, UNCLOS I, Vol. III, p.111, §18.

58. Koliopoufos, 1977, pp.246-247, 248.

59. For Turkish foreign policy during the Second World War, see Weber, 1979. See also Alexandris, *Balk.St.*, 1982.

60. Cunningham, 1951, pp.214-15, 218, 223.

61. Foreign Office to Knatchbull-Hugessen, 30-10-1940, Public Record Office, Foreign Office 371/R8130/316/44. Knatchbull-Hugessen to Foreign Office, 28 November 1940, Public Record Office, Foreign Office 371/R8697/316/44.

islands.⁶² In 1943, Turkey asked that it be allowed to annex "some islands in the Aegean Sea"⁶³ as its prize for entering the war on the side of the Allied Powers.⁶⁴

After the end of World War II, the Council of Foreign Ministers in London in 1945 recognized in principle that the Dodecanese islands should be awarded to Greece.⁶⁵ They were finally ceded to the Greek state according to the terms of the Treaty of Paris (1947) which was signed between Italy and the Allies, including Greece, and which disposed of Italy's overseas possessions. The Dodecanese islands were demilitarized by Article 14 of the Peace Treaty with Italy, 1947.

It seems that the demilitarization clause was included in the treaty in order to satisfy the United States and was intended to prevent the establishment of a Soviet military base in the Dodecanese islands.⁶⁶ After the end of the Second World War, the Dodecanese islands were under British occupation. In January 1946, the Soviet government demanded, in the first meeting of the U.N. Security Council, that the Dodecanese islands be ceded to the USSR, without success.⁶⁷ A further reason for U.S. satisfaction was that the cession of the Dodecanese islands to Greece also eliminated British power in the eastern Mediterranean.⁶⁸ In 1946, Greece was at the brink of the civil war. There existed the possibility that Greece might be detached from the British sphere of influence and fall into the Soviet one. Thus, whatever the eventual outcome of the civil war, Article 14 was intended to prevent the establishment of a Soviet military base in the Dodecanese islands.⁶⁹

62. Kroll to Papen, 29 April 1941, Auswartiges Amt 1303/1314. Ritter to Papen, 29th April 1941, Auswartiges Amt 1303/372. See also Knatchbull-Hugessen to Lyttelton, Cairo, Public Record Office, Foreign Office 371/R7421/236/44. But a different opinion is expressed by Gurcan, *The Aegean issues: Problems and Prospects*, pp.118-119, fn.8.

63. Weber, 1979, pp.59-60, 81-82. Papen to the German Ministry of Foreign Affairs, 29 August 1943, Auswartiges Amt 52/1243, 14-9-1943, Auswartiges Amt, 52/1322. See also U.S. Department of State, *Foreign Relations of the United States: Diplomatic Papers. The Conferences at Cairo and Tehran*, 1943, pp.586-593.

64. For more about the Turkish policy during the Second World War, see also Heliadis, 1996.

65. Xydis, 1963, pp.197-198.

66. Ibid., p.455; see also *infra* pp. 423-426.

67. Woodhouse, 1968, p.257; Xydis, 1963, p.182.

68. Xydis, 1963, p.222, fn.79, p.613.

69. See *Rizospastis* (Athens newspaper), 20 June 1946, the newspaper of the Greek Communist Party which criticized the demilitarization clause and blamed the British for it.

Turkey did not raise any objections to this treaty, although it has been argued recently that Turkey "agreed" to the transfer of these islands as a token to Greece for its participation in the post-war Western Alliance. The reality is that Turkey (the evasive neutral), because of its neutrality during World War II, was in no position to obstruct the transfer of these islands to Greece, even if she had wished to do so.⁷⁰

The 1947 Treaty of Paris had an important consequence for the delimitation of the territorial waters of Greece and Turkey. In 1932, when the Dodecanese islands were under Italian occupation, a treaty between Turkey and Italy was signed according to which the two states defined the islands and maritime spaces accorded to each country.⁷¹ An Italo-Turkish *procès-verbal* followed on 28 December 1932 which explicitly referred to the points of the delimitation line between the two countries.⁷² According to the terms of this protocol, the boundary defined the sovereignty of each country in the maritime spaces between the coasts of the two states.⁷³ With the exception of the zones between Rhodes and the island of Kastellorizo, all the other areas were delimited on a median line basis between the two opposite coasts.

Article 14 of the Paris Treaty of 1947 ordered the Dodecanese islands to be transferred to Greece. According to the Vienna Convention on Succession of States in Respect of Treaties, a succession of a state does not affect "a boundary established by treaty or obligations and rights already established and relating to the regime of a boundary."⁷⁴ Thus, it can be concluded that Greece, as a successor of Italy's obligations in relation to the Dodecanese islands, replaced Italy in its responsibilities and agreements and that there is a

See also archives of Dragoumis, Athens, Greece, *Dispatch from Paris to Athens*, 26 June 1946.

70. Wilson, in *Greece and Turkey: Adversity in Alliance*, 1984, p.92. See also official statement of the Turkish foreign minister in London in 1964 where he considered it a mistake that "Greece did not offer at the peace conferences of Paris at least half the Dodecanese islands in order to strengthen the Greek-Turkish friendship."

71. *LNTS*, Vol. 138, 1933, pp.243-249; see also *Delimitation of the Territorial Waters Between the Island of Castellorizo and the Coasts of Anatolia*, *PCIJ Series C*, No.61, pp.10-12; see also *Resmi Gazette*, 25 January 1933, Nr.2313, Classification C, Vol. 14/1, pp.219-225. See *infra*, pp. 401-403, 406-408.

72. For a detailed discussion on the effect of this *procès-verbal*, see *infra*, pp. 401-403, 404-419.

73. Georgacopoulos, 1988, p.117.

74. Vienna Convention [1978], art.11; see also O'Connell, 1967, Vol.II, p.273; Tyranowski, *Th.Ac.*, 1985, pp.469-477, 499-502.

boundary line establishing the maritime frontiers between the Dodecanese islands and the southwestern coasts of Anatolia.⁷⁵

6. REAWAKENINGS OF THE TRADITIONAL ENMITY

The years between 1930 and 1950 can be considered as the best period in the mutual relations of the countries. The reason might be the fact that both Greece and Turkey "shared the same perceptions of external threat,"⁷⁶ namely Italy before the Second World War and the Soviet Union and its allies after it.

The problems that arose between the two countries during the period following the Lausanne Treaty of 1923 up to 1950 can be divided into two categories. At the political level, one particular issue has tested relations between the two neighbors and contributed to their progressive deterioration. By asking to take control of the eastern Aegean islands during the Second World War, Turkey deviated from the non-expansionist policy adopted by Atatürk. The fact that this request for control over the Aegean islands was made three times between 1940 and 1943, a period during which the Greek nation was fighting for its survival, did not pass unnoticed and resulted in the creation of mistrust.

As regards the treaties which were signed in the years after 1922, the Lausanne Treaty was severely breached by Turkey. The victim was the Greek minority of Constantinople. During the Second World War, a confiscatory tax was introduced which bore disproportionately on non-Muslims.⁷⁷ Despite these problems, the provisions of the Lausanne Treaty together with the Treaty of Paris of 1947 formed the new legal environment between the two countries in the years after the Second World War.

75. For more, see pp. 409-413.

76. Clogg, in *The Greek-Turkish Conflict in the 1990s*, 1992, p.22.

77. See Clark, *MES*, 1972, pp.205-216.

3. The Years between 1950 and 1970: Preparation for the Conflict—New Rules for the International Law of the Sea

A. PROBLEMS BETWEEN GREECE AND TURKEY IN THE 1950s AND 1960s

At the height of the Cold War in 1952, Greece and Turkey were admitted to the NATO Alliance, but this did not end the hostility between the two nations. A new thorn in Greek-Turkish relations developed: the Cyprus problem. Since 1929, the GreekCypriot majority (approximately 80% of the population) had consistently expressed its desire to put an end to the British occupation and to be united with Greece. In 1955, guerrilla fighting started for *enosis* (union) with Greece. As an answer to this struggle, atrocities took place in Istanbul and Izmir in September 1955 against the Greek minority, which had been exempted from the compulsory exchange of populations of 1923 and was established there in accordance with the Lausanne Treaty.¹

Although in the late 1950s Greece and Turkey tried to improve their relations, and despite the proclamation of the independence of Cyprus in 1960, the internal stress and conflicts on this island between the Greek majority and the Turkish minority caused a major crisis in Greek-Turkish relations. The demand of the ethnic Greek majority in Cyprus for union with Greece was considered by Turkey as a reawakening of the "Great Idea" policy among the Greeks.² On the other hand, the destructive riots affecting Greek properties in Istanbul in September 1955, organized by the Turkish police, marked the beginning of the end of the once flourishing Greek community. A dramatic decline in its numbers took place in the months and years after this incident.³ Matters of security were also raised. Turkey accused Greece of upsetting the status quo by militarizing the eastern Aegean islands and particularly the island of Lemnos.

1. See Alexandris, 1983, pp.252-279.

2. Ahmad, 1993, pp.140-142.

3. There are now 3,000, mainly elderly, Greeks living in Istanbul.

The two principal issues confronting Greece and Turkey in the Aegean Sea during the 1960s concerned, first, the adoption by Turkey of the system of straight baselines. The second issue concerned a matter of security since Turkey claimed that Greece was violating international treaties and had started to militarize the islands of the eastern Aegean.

1. BASELINES

Greece had defined its legal baselines for maritime boundary delimitation purposes as the "low-water mark along the coast." In 1964, Turkey opted to draw straight baselines along a portion of its coasts which, almost exclusively, were facing the Aegean Sea. The existence of two different systems for the drawing of baselines between the two countries was problematic since it could affect the delimitation of any maritime zones in the Aegean. Any delimitation, whether drawn according to the median line or on the basis of equity, has to start, according to conventional law, from the baselines which the parties have determined for their respective coastlines. The moderate, by its nature, baseline based on a low-water mark can confer only limited areas of maritime zones in comparison with the straight baselines.

(a) Views of the Two Parties

Greece contested the validity of the Turkish straight baselines system from the time of its adoption in 1964.⁴ The Greek tendency to object to straight baselines dates from the time of UNCLOS I, where the Greek delegate, Krispis, expressed concern that their use would give states jurisdiction over vast areas previously considered part of the high seas.⁵ Greece argued that straight baselines should only be used where there was a deeply indented coastline or where islands existed in the immediate vicinity, but that even the length of the baseline should not exceed ten miles and no point on such a line should be more than three miles from the coast.⁶

Greece did not like the effect that the straight baselines would have in a delimitation. The new system of straight baselines extended the Turkish internal waters in the straits area to the detriment of the Greek islands of Lemnos and Samothrace. Three slight displacements also took place in the areas

4. O'Connell, *Aegean Sea Pleadings*, p.89; see also *The Aegean Sea*, 1978, §89; *supra*, p.15.

5. UNCLOS I, *Off.Rec.*, Vol. III, p.21.

6. UNCLOS I, *Off.Rec.*, Vol. III, Doc. A/Conf.13/ C.1/ L.63, p.229.

opposite the island of Lesbos and Chios. The area which, according to Greek claims, was added to Turkish internal waters because of the use of the straight baselines is approximately 220 sq. Km. in a total area of 187,000 sq. km.⁷ For these reasons, Greece considered that Turkey was only entitled to claim maritime areas in the Aegean by taking as its starting point the low-water mark and not the straight baselines system.

Another issue which is questionable according to Greece is whether the Turkish baselines were drawn in conformity with international law. For example, straight baselines must follow the general direction of the coastline.⁸ The inclusion of the two islands of Imbros and Tenedos in the system of baselines raised serious doubts. In UNCLOS I, Greece supported a United Kingdom proposal concerning baselines which tried to impose a right of innocent passage.⁹ Greece also proposed an additional paragraph incorporating a stricter text which would have required that baselines, at most ten miles in length, be drawn "between headlands of the coastline and...an island less than five miles from the coast."¹⁰ It seems that this proposal was directed at the islands of Imbros and Tenedos. Last but not least was the twenty-four-mile bay closing line. Greece does not recognize as part of customary law any closing line exceeding ten miles.¹¹

When Greece became a party in 1972 to the Geneva Convention on the Continental Shelf, it expressed a reservation in accordance with Article 12 of that Convention with respect to the applicability and interpretation of Article 6 concerning the use and selection of straight baselines for delimitation purposes.¹² According to this reservation, the Greek government in the absence of international agreement "will apply the normal baseline for measurement of territorial sea to delimit shelf boundaries."

Turkey, on the other hand, did not express any view in relation to the Greek claims. From what is known, since the adoption of the straight base-

7. Information provided by an unpublished study on the construction of straight baselines for the use of the Greek Ministry of Defense.

8. Katsoufros, in *Le différend Gréco-Turc*, 1985, p.77.

9. UNCLOS I, *Off.Rec.*, Vol. III, at. 228, U.N. Doc. A/CONF.13/ C.1/ L.62/ Corr.1, (15 April 1958).

10. UNCLOS I, *Off.Rec.*, Vol. III, at. 252, U.N. Doc. A/CONF.13/ C.1/ L.157, Federal Republic of Germany, Greece, Italy and Japan: Proposal.

11. Zotiades, 1975, p.17. See also Papakostas, *HRIL*, 1961, p. 187. Also in the UNCLOS I, Doc. A/CONF. 13/ C. 1/L. 63, 27 March 1958.

12. Law 1182 of 14 June/8 July 1972, *ErK*, A' 111/1972.

lines, it has not recognized any previous delimitation and considers that a delimitation line shall take as its starting points the existing baselines between the two countries.¹³ Any possible adoption of a straight baselines system by Greece is not considered as *casus belli* as long as it is in conformity with the rules of international law.¹⁴

(b) Turkish Straight Baselines and International Law

Despite the fact that Greece objects to the Turkish straight baselines, Article 14 of the LOSC provides that the coastal state "may determine baselines in turn by any of the methods provided in the foregoing Articles." These methods include the low-water mark as well as the straight baselines. Thus, if the Turkish baselines were drawn according to international law, their acceptance by other states is irrelevant.

The criteria of the straight baselines system were outlined in the *Anglo-Norwegian Fisheries case*, in 1951, were later adopted in almost identical terms by the two Law of the Sea Conferences and became Article 4 of the Geneva Convention on the Territorial Sea and Article 7 of the LOSC.¹⁵ Turkey is neither a party to the Geneva Convention nor a signatory to the LOSC. Despite the fact that the International Court of Justice's (ICJ) judgment was widely regarded at the time as a "daring piece of judicial legislation,"¹⁶ the straight baselines laid down by the judgment have been drawn since 1951 along all or part of the coasts of eighty states.¹⁷ Many of these baselines have not been drawn in conformity with the formulae and criteria laid down in the judgment of 1951, nor with the conventional rules of 1958 and 1982. Nevertheless, a combined reading of the elements of the formulae utilized, as well as the fact that the Court considered the straight baselines system adopted by

13. View expressed to the author by officials of the Turkish Embassy in Athens, 19 November 1992. Nevertheless, it was stated that it is questionable if the use of such a system runs counter to the Bern Agreement which asks the two parties to abstain from any activities in the area; see *infra*, pp.144-146.

14. Charney, in *The Aegean Issues: Problems and Prospects*, 1989, p.254. See also Alexander, who states that "Turkey's west coast might be cut off by a Greek straight baseline system in the Aegean islands," *VJIL*, 1983, fn.86, p.516.

15. For an analysis of the Norwegian baseline system, see Hodgson and Alexander, in *Law of the Sea Occasional Paper*, 1973, pp.23-24.

16. Lauterpacht, H., *The Times*, 8 January 1952, p.7.

17. Reisman and Westerman, 1992, p.105.

Norway as "the application of general international law to a specific case,"¹⁸ provides the background for an evaluation of the Turkish straight baselines.¹⁹

The first test is that the coastline has to be "deeply indented and cut into."²⁰ This expression does not suggest an irregular or indented coastline but a coastline where there are a number of deep indentations such that it appears to be cut into.²¹ In general terms, the geographical circumstances of the area permit the use of straight baselines, since the enclosing coasts can be characterized as "deeply indented or cut into."²² At this point, it has to be observed that a state should not use very large charts which after a certain scale give a different impression of the shape of a coastline.²³ The scale of the official Turkish chart illustrating the Turkish straight baselines is too small "to permit an accurate and detailed analysis of the straight baselines segments."²⁴ Moreover, the coordinate values of the turning points have never been published.

A second basic criterion of the straight baselines is that they "must not depart to any appreciable extent from the general direction of the coast" and the sea areas lying within the lines "must be sufficiently closely linked to the land domain to be subject to the regime of internal waters."²⁵ It is very difficult to see how this requirement can be met in the north Aegean sector where the straits area together with the two principal Turkish islands are enclosed in the baselines system.²⁶ As Judge Hsu Mo pointed out in the *Anglo-Norwegian Fisheries* case, the "general direction of the coast" formula should not be applied so liberally that a coastal state "is at liberty to draw straight baselines in any way it pleases" and they "should follow the configuration of the coasts as far as possible."²⁷ The angle of deviation of the Turkish straight baselines

18. *Fisheries, ICJ Reports*, 1951, p.131.

19. See O'Connell, 1982, pp.217-218, where it is stated that Article 4 is not "a text for judicial decisions, but is an authorization to the legislature." See map 4.

20. Convention on the Territorial Sea, art. 4 (1), LOSC, art. 7 (1).

21. Reisman, Westerman, 1992, pp.79-82.

22. Ahnish, 1993, p.180.

23. Ibid., p.82.

24. See *Limits in the Seas*, 32.

25. *Fisheries, ICJ Reports*, 1951, p.133; Convention on the Territorial Sea, art.4(2), LOSC, art.7(3).

26. But see Bowett who states that the Turkish baselines "appear to be legally unexceptionable in all respects," 1982, p.255.

27. *Fisheries*, Sep. Opinion Hsu Mo, *ICJ Reports*, 1951, pp.155-157.

from the general direction of the coast is more than 40° between the Rabbit islands and Imbros, whereas the angle of the Norwegian baseline system, which is to be regarded as the standard model, was never more than 15° .²⁸

A third test for the use of straight baselines is that there be "a fringe of islands along the coast or in its immediate vicinity." Imbros and Tenedos, although they are offshore islands, do not form a fringe in the immediate vicinity of the Anatolian coast. Again, if the model is considered to be the Norwegian *skjaergaard*,²⁹ the number and distribution of the Turkish islands as well as their distance from the coast cannot be regarded as meeting the requirements of any quantitative test similar to that of the Norwegian case.

For these reasons, it can be concluded that, while most parts of the Turkish straight baselines were drawn in accordance with international law, the straits area, however, is problematic. At this point, it should be mentioned that it is generally considered that, where baseline segments are less than fifty miles long, the major gains of a state in ocean space are achieved in the territorial sea.³⁰ In the relatively limited maritime spaces of the Aegean, however, the rate of increase is greater in the areas of the continental shelf.

2. VIOLATION OF INTERNATIONAL TREATIES

The second issue between the two countries in the 1950s and 1960s concerned Turkish claims that Greece was violating international treaties in that it had started to militarize the islands of the eastern Aegean. The treaties invoked by Turkey were the Treaty of Lausanne (1923) and the Treaty of Paris (1947).³¹ Article 4 of the Treaty of Lausanne required the demilitarization of all the islands at the entrance of the Dardanelles, including Lemnos and Samothrace. Military activities on the islands of Lesbos, Chios, Samos and Ikaria were also under certain militarization restrictions according to Article 13 of the Treaty of Lausanne. Article 14 of the Treaty of Paris had provided for the Dodecanese islands to be demilitarized, but without applying these provisions to the members of the gendarmerie and security forces.

28. See Churchill and Lowe, 1988, p.32. See map 4.

29. Reisman and Westerman, 1992, p.86.

30. Prescott, in *Maritime Boundaries and Ocean Resources*, 1987, table 3.1, p.49.

31. See letter of the Turkish prime minister to the Greek prime minister, 14 May 1976, *Aegean Sea Pleadings*, p.612.

The Turkish claims were rejected by the Greek government as far as they concerned the Dodecanese islands, Chios and Lesbos. The Greek government did not consider that the Turkish claims applied to the islands of Lemnos and Samothrace. According to this view, the Montreux Convention of 1936 applied not only to the Turkish straits, but also covered the Greek islands of Samothrace and Lemnos.³² This treaty replaced the Treaty of Lausanne in the straits area and abolished its demilitarization provisions. Although the islands of Lemnos and Samothrace were not explicitly mentioned in the Treaty of Montreux, they were referred to in its provisions, a fact recognized by Turkish officials at the time the treaty was signed.³³

Cyprus was another problematic issue for Greek-Turkish affairs in the 1960s. Fighting between the two communities of the island, threats of invasion and Turkish air raids, infiltration by units of the Greek army, American plans for union of Cyprus with Greece in return for the creation of Turkish military bases and the dispatch of a United Nations peace-keeping force (UNFICYP) were serious events which had a profound effect on the relations and public opinion of the two countries.³⁴

B. THE FIRST CODIFICATION OF THE INTERNATIONAL LAW OF THE SEA

The period of the 1950s was not only a period of growing tension between the two countries, but it also heralded a new era in the field of international law. In 1947, the General Assembly of the United Nations established the International Law Commission,³⁵ the main functions of which are the drafting of new rules of international law and the recasting of existing customary law into written form.³⁶ Past efforts by individuals and private and

32. See Dontas, 1987. See also Pazarci, 1986; Economides, 1989; Svolopoulos, *Balk.St.*, 1985.

33. See Record of the Turkish National Assembly, Vol. 12, p.309, 5th Parliamentary Period, 5th session, 61st meeting, where the Turkish foreign minister said that "the provisions regarding the island of Lemnos and Samothrace...islands which were demilitarized according to the convention of Lausanne in 1923, are also abrogated by the Treaty of Montreux."

34. For more, see Kyriakides, 1968; on UNFICYP, see *U.N., The Blue Helmets*, 1990, pp.281-311.

35. Resolution of the General Assembly, 174 (II), 21 November 1947.

36. On the ILC, see Jagota, *IJIL*, 1976, p.459ff; Goldie, *FBJ*, 1968, p.25ff; Cheng, *CLeg.Pr.*, 1952, 251ff.

official bodies³⁷ to codify the international law of the sea finally culminated in the work of the ILC which considered this part of international law between 1950 and 1956. The Draft Articles which it presented to the General Assembly of the U.N. in 1956 were submitted by subject matter to a specially convened conference—the First United Nations Conference on the Law of the Sea (UNCLOS I). The fruits of UNCLOS I were four separate conventions which tried to address almost all the issues of the international law of the sea. Nevertheless, since this study is focused on the Aegean problem, only the topics that have a direct relevance to it will be examined.

Probably the most basic and yet most problematic characteristic of the Aegean problem is the existence of so many islands in the Aegean Sea. Islands are generally considered as one of the geographical factors which may create great difficulties in relation to the concept of the maritime zones, which in the years following the Second World War were enlarged by a new zone, that of the continental shelf. Thus, there are three main questions which are relevant to the Aegean problem and need to be examined, namely: (a) what is an island?, (b) can an island generate a territorial sea and a continental shelf?, and (c) if so, how are these two maritime zones to be delimited?

1. WHAT IS AN ISLAND?

Because of the large number of insular formations that exist in the Aegean Sea, which include islands, islets, low-tide elevations, rocks and reefs, it is important to start by defining what the geographical concept of an island is in international legal terms. This approach becomes more important after the Imia/Kardak incident in January 1996 when Turkey started contesting the Greek sovereignty over a number of islets and rocks in the Aegean with arguments based *inter alia* on the size of these insular formations.

The first conscious attempt to define just what an island comprises was made at the Hague Conference in 1930. The replies of governments to the Preparatory Committee's Questionnaire at this Conference had mentioned a great variety of permissible basepoint features and hence "the Basis for Discussion deduced from these replies was, not surprisingly, none too clear since

37. See *inter alia*, the codes of Institut de Droit International, the ILC, the American Institute of International Law, and the German and Japanese Societies of International Law; The codifications by Harvard Law School, in *AJIL*, 1929, (Spec.Suppl.) and the Hague Codification Conference of 1930.

it spoke solely in terms of islands without more particular reference.”³⁸ This situation was very well described by the U.S. delegate when he remarked that “...we have talked of bays and islands, of archipelagos and straits without at times being sure of the delimitation of our terms.”³⁹ Sub-Committee II (territorial waters) of the 1930 Hague Conference, in its eventual report, adopted the criterion of emergence at high tide and used a more precise and scientific definition of an island by describing it in its draft rules as “an area of land surrounded by water, which is permanently above high water mark.”⁴⁰

The question of islands was raised in the meetings of the ILC before 1954 mainly in relation to their right of generating territorial waters or continental shelf.⁴¹ Of particular relevance to the Aegean Sea problem were the discussions over possible limitations of the size of an island.⁴² Finally, it was agreed that “an island is an area of land surrounded by water which in normal circumstances is permanently above high water mark.”⁴³

None of the proposed amendments concerning the definition of an island in UNCLOS I included any requirement regarding the size of insular formations.⁴⁴ The U.S. amendment defined an island as “a naturally formed area of land, surrounded by water, which is above water at high tide.”⁴⁵ The words “permanently” and “in normal circumstances” were omitted, while the phrase “naturally formed” was added. The U.S. explained that the ILC’s definition of an island included artificially placed land which permitted “undesirable means of extension of the territorial sea and consequent encroachment of the freedom of the high seas.”⁴⁶

38. McDougal and Burke, 1962, pp.391-392.

39. 15th meeting of the 2nd Committee on Territorial Waters.

40. Report on the Second Commission, art. 2, C 230, M 117 1930, V.p.13.

41. See *YBILC*, 1953, Vol. I, 252nd meeting, 5th Session where Spyropoulos stated: “...that only an island and island alone, could have the status of an island. A heap of stones could be an island and it would be subject to international law.”

42. *YBILC*, 195, Vol. I, pp.91, 92, 94; see also similar problems raised by Turkey in relation to the “gray” zones of sovereignty in the Aegean *infra*, pp.344-359.

43. *YBILC*, 1954, Vol. II, Report of the ILC to the General Assembly, p.156.

44. See Spanish proposal, Doc. A/Conf 13 /C.1/L.113, UNCLOS I, *Off.Rec.*, Vol. III, p.242.

45. Doc. A/Conf 13/13 C.1/L.112, *Off.Rec.*, Vol. III, p. 242.

46. *Ibid.*, comments on amendment, point c.

This was approved by the Drafting Committee,⁴⁷ adopted by the First Committee and became Article 10, paragraph 1 of the 1958 Convention on the Territorial Sea. The Continental Shelf Convention, unlike the Territorial Sea Convention, does not contain any definition of islands. However, this fact seems unimportant because "there appears to be no good reason, as a matter of treaty interpretation, why the same definition should not be utilised in both Conventions."⁴⁸

2. CAN ISLANDS GENERATE TERRITORIAL SEAS AND CONTINENTAL SHELVES?

(a) *Territorial Sea*

The right of an offshore formation, provided that it constitutes a true island, to generate a territorial sea in the same way and to the same extent as would a continent was not so apparent in the past as it is today. It was not until the beginning of the nineteenth century that islands were considered as having the effect of creating a territorial sea when "they were close enough to the coast to constitute a 'portico' thereof."⁴⁹ In 1882, the North Sea Fishery convention⁵⁰ provided that "the territorial line shall be measured along...the independent islands and banks."⁵¹

During the codification period of the 1920s, the tendency was to favor a requirement that "the territorial sea be drawn from every permanently dry feature, irrespective of the geographical situation, and in accordance with a single basic formula for describing the territorial sea."⁵² Thus, the International Law Association in 1926⁵³ and l'Institut de Droit International in 1928⁵⁴ settled for the rule that islands had their own territorial sea.⁵⁵ Also, in

47. Doc. A/Conf.13 /C.1/L.167, UNCLOS I, *Off.Rec.*, Vol. III.

48. Symmons, 1979, p.12.

49. On the "portico doctrine," see O'Connell, 1982, p.185; see also *The Anna*, 1805, *English Reports Reprint*, p.809.

50. *BFSP*, 73, p.39, 1882.

51. Colombos, 1967, p.123.

52. O'Connell, 1982, p.192.

53. Report of the 34th Conference, 1926, 102, art.4.

54. 34 *Annuaire*, 1928, 645, 756, art. 4.

55. See *AJIL*, 1926, p.318, art. 7 (draft Articles of the American Institute of International Law and the results of the Harvard Research in *AJIL*, 1929, p.243, art.7).

the Second Committee of the Hague Codification Conference, it was stated quite categorically that "every island has its own territorial sea."⁵⁶

(i) *International Law Commission*. This general understanding that islands are capable of generating a territorial sea was quite clear in the beginning of the 1950s in the meetings of the International Law Commission. These meetings, however, gave rise to another problem which was directly connected to the situation in the Aegean Sea, whether all islands wherever situated, in a territorial sea off the mainland or in the high seas, had a territorial sea of their own.

The matter was raised by Hersch Lauterpacht in relation to draft Article 11 concerning islands.⁵⁷ Scelle continued by saying that this article should give the right to generate such a maritime zone only to islands already situated within the territorial sea.⁵⁸ This suggestion was rejected by other speakers⁵⁹ as well as by Rapporteur Francois who categorically stated that "the rule that islands had a territorial sea of their own...applied to all islands and not only to those in the territorial sea."⁶⁰ In the comments on Article 10 (draft Article 11) on islands, it was declared that every island has its own territorial sea and that "this Article applies both to islands situated in the high seas and to islands in the territorial sea."⁶¹

(ii) *UNCLOS I*. The draft Article of the ILC was discussed at UNCLOS I "both of reasons of substance and form."⁶² Denmark said that "one of the essential elements in the determination of the breadth of the territorial sea must necessarily be the economic importance of the territorial sea to the coastal population." Therefore, in "exceptional circumstances it would seem reasonable to allow the coastal State to fix a wider breadth of the territorial sea than the breadth normally adopted for other coastal areas."⁶³ However, the majority

56. *Acts of the Hague Conference 1930*, Vol. III, p.212. On the developments which took place at The Hague, see Reeves, *AJIL*, 1930, pp.486-499.

57. *YBILC*, 1954, Vol. I, p. 92: "However small the island or the area of land purporting to be an island might be, it inevitably involved the subsidiary questions of the territorial sea of that island, the zones contiguous to it..."

58. *Ibid.*

59. Such as Pal, Spyropoulos and Sandstrom, *ibid.*, p.93.

60. *Ibid.*, p.94.

61. *YBILC*, 1954, Vol. II, p.157. Report of the ILC to the General Assembly.

62. Symmons, 1979, p.92.

63. *UNCLOS I, Off.Rec.*, Vol. I, p. 81.

of the delegations seemed to be quite happy with the Draft Articles of the ILC.⁶⁴

Burma objected to the right of all islands to generate a territorial sea.⁶⁵ It suggested that "where an island belonging to one State is within the territorial sea of another State that island shall not have its own territorial sea."⁶⁶ In supporting this view, the Burmese delegate stated that if "such an island were to have its own territorial sea it would also be entitled to its own contiguous zone and continental shelf and the result would be an intolerable conflict of jurisdiction."⁶⁷

The reaction of the delegations of Greece and Turkey towards this proposal is indicative of their stand as it concerns the Aegean Sea in the pre-1973 period. Despite the direct and serious implications for the Aegean, Turkey did not make any comments on the Burmese proposal. On the other hand, the Greek delegate, Krispis, argued that it took no account of the security needs of the islands in question. It also implied a new concept of a "sea-locked" state similar to that of a land-locked state. If accepted, the proposal would place these islands in a hopeless situation in a time of war. Furthermore, because an island's sovereign right to a territorial sea was undeniable, sovereignty could not be surrendered. Finally, he argued that the concept of the zone of the territorial sea was connected with that of the continental shelf. The UNCLOS I Committee which was responsible for the continental shelf regime had already decided that islands were entitled to exploit their own continental shelf,⁶⁸ which in turn required that islands must have a belt of territorial waters.⁶⁹ With the exception of the islands lying within internal waters, there was "no other case in which an island had no territorial sea of its own."⁷⁰ The Greek view was left uncommented upon without objection by the other delegations.

64. See, e.g., preparatory documents, UNCLOS, *Off.Rec.*, Vol. I, pp.79-80, Cuba's submission, 1 May 1957: "Islands excluded of archipelagoes...will continue to be governed by the traditional rule, which recognizes that every island has its own territorial sea."

65. UNCLOS I, *Off.Rec.*, Vol. I, p.81.

66. Doc A/Conf.13 /C.1/L.3, Vol. III, p.212.

67. UNCLOS I, *Off.Rec.*, Vol. III, p. 161.

68. UNCLOS I, *Off.Rec.*, Vol. VI, pp.46-50, art.67.

69. UNCLOS I, *Off.Rec.*, Vol. III, p.162. See the Burmese delegate's reply that the "primary security needs to be considered were those of the coastal State" and as far as sovereignty was concerned "the paramount rights were those of the dominant territory," *ibid.*

70. *Ibid.*, pp.200-201.

Finally, the text adopted followed the line given by the ILC and endowed islands with a full territorial sea. Paragraph 2 of Article 10 reads as follows: "The territorial sea of an island is measured in accordance with the provisions of these articles."

(b) Continental Shelf

The decisive event in state practice concerning the continental shelf was a proclamation by the United States on 28 September 1945, the so-called "Truman proclamation." This marked the beginning of an epoch in both law and technology and gave birth to the legal doctrine of the continental shelf. By means of the proclamation, the United States claimed the "natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States subject to its jurisdiction and control."⁷¹

The new concept proved attractive to a large number of states, as it fulfilled two essential characteristics: (a) it satisfied the desire of coastal states to exploit petroleum and other natural resources, and (b) it made a reasonable accommodation for freedom of navigation and fishing in the superjacent waters.⁷² The ambiguity of the new legal concept, however, provided, and unfortunately still provides, a source of controversy as well as serious practical problems.⁷³

The concept of the continental shelf as accepted by international practice since the Truman proclamation applied, despite its name, "not only to the shelves of continents, but also of islands."⁷⁴ Agreements as well as state legislation followed a similar approach and referred to islands on the same footing with continents as regards their rights over the continental shelf.⁷⁵

(i) *International Law Commission*. In the comments on its 1951 draft, the ILC said that "the word continental in the term continental shelf as here used does not refer exclusively to continents. It may apply also to islands to

71. New Directions in the Law of the Sea, Vol. I, 1973, p.106.

72. Brownlie, 1990, p.224. On the rapid evolution of the continental shelf regime, see Lauterpacht, *BYBIL*, 1950, pp.376-433.

73. For a critical evaluation of the concept and the problems arising from its legal nature, see Andrassy, 1970, pp.49-128; Oda, 1963, pp.147-177.

74. See Symmons, 1979, p.130; Mouton, 1952, p.240; also Oda, *JapAIL*, 1968, pp.264-270.

75. See Auguste, 1960, p.111; Symmons, 1979, p.130.

which such submarine areas are contiguous.”⁷⁶ This view was reiterated in the comments on the 1953 draft Article.⁷⁷

The issue of whether all islands regardless of their size could claim a continental shelf was also discussed when considering if, in the sentence which provided that the continental shelf embraced the submarine areas contiguous to islands “regardless of their size,” the last four words “were not redundant.”⁷⁸ There was general agreement that the size of an island is an irrelevant factor⁷⁹ as expressed: “an island is an island regardless of its size, without the necessity for saying so.”⁸⁰ The final proposal of the ILC on the continental shelf in its Comment 10 on Article 67 reads as follows: “[the] term continental shelf does not imply that it refers exclusively to continents in the current connotation of that word. It also covers the submarine areas contiguous to islands.”⁸¹

(ii) *UNCLOS I*. Although it seemed quite clear to the members of the ILC that the insular shelves were included in the concept of the continental shelf, the failure to make this explicit caused problems at *UNCLOS I*. The matter was taken up by the Philippine delegate who considered that the concept of the continental shelf “was limited to that portion of the seabed and subsoil of the submarine areas adjacent to the coast which extended outwards underneath the high seas [and not] to the island shelves of an archipelago.”⁸² Thus, an amendment was sought according to which “all references...to the continental shelf shall be understood to apply also to similar submarine areas adjacent to and surrounding the coasts of islands.”⁸³

This view was strongly supported by other delegations who considered it axiomatic that islands should be treated in the same way as mainlands.⁸⁴ An

76. *YBILC*, 1951, Vol. II, p.141, Report of the ILC to the General Assembly, art.1, comm.4.

77. *YBILC* 1953, Vol. II, p.214, com.67. See also meetings where the term continental shelf refers to submarine areas “continentales ou insulaires,” *YBILC*, 1953, Vol. I, p.71,79.

78. *Ibid.*, p.340, Kozhevnikov.

79. *Ibid.*, p.341, Scelle; Amad, p.340.

80. *Ibid.*, Spyropoulos, p.340, the special rapporteur agreed.

81. *YBILC*, 1956, Vol. II, p.296-297.

82. *UNCLOS I*, *Off.Rec.*, Vol. VI, 4th committee, p.8.

83. U.N. Doc. A/Conf. 13/C 4/L 26.

84. *UNCLOS I*, *Off.Rec.*, Vol. VI, United Arab Emirates, pp.27-28; Colombia, p.40; U.K., p.41; Italy, p.94; Iran, p.96.

amendment submitted by the Netherlands/Panama⁸⁵ attempted to include in the definition of the continental shelf geological terms specifically relating to islands, but it was not approved.⁸⁶ The Colombian delegate also voiced concern that the term continental shelf "would also apply to islands in the generally accepted use of that word, with the exception of islets forming part of a continental shelf."⁸⁷

It was agreed, finally, that the phrase "continental shelf" should be retained but defined in what became Article 1 of the 1958 Continental Shelf Convention, as follows:

For the purpose of these articles the term continental shelf is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea to a depth of 200 metres or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

It is clear, beyond a doubt, from the debates in the Fourth Committee of UNCLOS I and the final Article 1b that "islands, like any mainland, were entitled to a continental shelf."⁸⁸

The Greek and Turkish delegations were not very enthusiastic participants in these debates over issues such as insular shelves. They adopted a rather theoretical approach by questioning either the customary law character of the new regime or whether the criterion of the possible exploitation of the continental shelf could create problems in the future.⁸⁹ Their presence, however, was hardly even noticed during the work of the Fourth Committee, probably due to the fact that during that period they had a total lack of interest in the new regime of the continental shelf, since the prospect of it having any practical application seemed extremely distant to the two neighbors.

85. *Ibid.*, p.96.

86. According to Brazil, the use of the term island shelves "would introduce a new element of doubt and make the text unnecessarily complicated," *ibid.*, p.36.

87. *Ibid.*, p.40.

88. Bowett, p.139. See Symmons, 1979, p.132.

89. UNCLOS I, *Off.Rec.*, Vol. VI, Greece, p.6, Turkey, p.12.

3. DELIMITATION OF TERRITORIAL SEA AND CONTINENTAL SHELF AROUND ISLANDS

A third question concerns the delimitation of the maritime zones of islands. By delimitation is meant "the determination or fixing in precise detail of the actual boundary" between two states which have overlapping claims to offshore areas.⁹⁰ However, the legal concepts that have to be used in order to settle the actual details of this boundary are different from the legal concepts by which the areas of sovereign territory of two states are established.⁹¹ Thus, for example, if we have a common continental shelf between two states, each state is entitled to a portion of it. But, to define exactly how much continental shelf "appertains to" a state, we have to follow a process of delimitation which has its own concepts and rules.

Fundamental in this process are the concepts of "the median line" and the "principle of equidistance." The former is a line "representing the half way point between opposite coasts."⁹² The latter is a line which consists of "a locus of points, each equidistant from the nearest points on the baselines of adjacent or opposite states. Any point on such a line is precisely the same distance from the nearest parts of the coastal states."⁹³ It has been pointed out that "in that case equidistance refers not to the areas to be allocated respectively to the adjacent coasts, but to the baseline."⁹⁴

(a) *Territorial Sea*

In 1953, experts had been invited by the ILC to examine certain technical questions, including, *inter alia*, boundaries. One of the questions was whether an international boundary should "be drawn between two countries, the coasts of which are opposite each other at a distance of less than 2 territorial miles." Another concerned "the extent to which islands and shallow waters were to be accounted for."⁹⁵ These two issues touch the heart of the matter.⁹⁶

90. O'Connell, 1982, p.691.

91. Weil, 1989, pp.90-91.

92. O'Connell, 1982, p.684; Boggs, *Geog.Rev.*, 1937; Boggs, *AJIL*, 1951, pp.240-266.

93. Padwa, *ICLQ*, 1960, p.632. See O'Connell: "a line which runs laterally at right angles to the baseline from which the territorial sea is drawn," 1982, p.684.

94. O'Connell, 1982, p.685. For a detailed description of the equidistance see Brown, 1971, pp.71-73.

95. A/CN.4/61 Add 1, 18 May 1953.

96. Weil, 1989, p.71.

The earlier discussion of the entitlement of an island to a territorial sea does not prejudice the question of how much territorial sea the island is entitled to. This question arises whenever the islands affect the territorial sea boundary of an adjacent or opposite state. In past times when the three-mile territorial sea was generally accepted, the presence of islands, whatever their size, in areas to be delimited caused few problems. Thus, there was no discussion on this point prior to the ILC's meetings in the 1950s.⁹⁷

(i) *International Law Commission*. In 1952, the ILC discussed the possibility of framing a general rule of delimitation applicable to the concepts of both the territorial sea and the continental shelf. Some members of the Commission doubted the wisdom of such an approach. As Spyropoulos said, "It was not always possible to formulate general rules of law of universal application"⁹⁸ although "it would be inadmissible to reach different decisions in view of the close connection between the two questions."⁹⁹ Thus, from the outset, the delimitation of the continental shelf and of the territorial sea were seen as two inter-connected issues.

As regards the question of the delimitation of the territorial sea between adjacent and opposite states, the Committee of Experts replied that "as a general rule the boundary shall be the median line every point of which is equidistant from the baselines of the State." Then, they suggested that "unless otherwise agreed between the adjacent States, all islands should be taken into consideration in drawing the median line." However, they mentioned that "there may be special reasons...which may divert the boundary from the median line."¹⁰⁰ It should be noted that the "Commission had considered this proposal in connection with the delimitation of the continental shelf."¹⁰¹ The special rapporteur's draft Article presented in the 1954 session adopted the Committee's proposal that every island should be taken into account in establishing the territorial sea median line.¹⁰²

97. See Yates and Young, 1974, p.141; for a summary of basic theoretical directions prior to 1950, see Gidel, Vol. III, pp.732-733; See also La Pradelle, 1928, pp.214-216. Boggs, *International Boundaries*, (1940), pp.188-190; McDouglas and Burke, 1962, pp.428-437.

98. *Yearbook ILC*, 1952, 171st meeting, p. 181.

99. *Ibid.*, p.183.

100. *YBILC*, 1954, Vol. II, p.157. Comment in Article 15.

101. *Ibid.* As to the common origin of the two concepts, see *YBILC*, 1953, Vol. I, Cordova and Spyropoulos, pp.131,134. See also Padwa, *ICLQ*, 1960, p.634.

102. Delin, *NTIR*, 1971, pp.209-210.

(ii) *UNCLOS I*. The First Committee's consideration of the ILC's draft Article on opposite and lateral delimitation in the territorial sea took place after the Fourth Committee had finished its consideration of the same issue as regards the continental shelf delimitation. Since the draft articles were the same, most states simply reiterated their previous positions. The phrase "historic rights" was added to the phrase "special circumstances" in the wording of the territorial sea delimitation Article.¹⁰³

The phrase "special circumstances" raised certain objections in the Geneva Conference.¹⁰⁴ The weakness of the phrase "special circumstances" lay in the fact that there was no definition of these. However, as was pointed out, "special circumstances did exist...for reasons of equity or because of the configuration of a particular coast...[or where] the situation might be complicated by small islands."¹⁰⁵

The text finally adopted as Article 12 of the Territorial Sea Convention provided:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reasons of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

This provision has an obvious similarity with that of Article 6 of the 1958 Convention on the Continental Shelf. This could make someone think that there "is evidence to suggest that islands might well be a typical example of special circumstances."¹⁰⁶ Because the special circumstances factor is undefined, it may be particularly applicable where small foreign-owned islands are in the proximity of a state's coastline.¹⁰⁷

103. German Amendment, U.N. Doc.A/Conf.12/C.1/L.121.

104. See Amendments of Yugoslavia, Portugal, U.N. Doc.A/Conf.12/C.1/L. 60 and L.101.

105. *UNCLOS I, Off.Rec.*, Vol. III, Fitzmaurice, p.189.

106. Bowett, 1982, p.35.

107. See Hodgson, in *Law of the Sea: Emerging Regime*, 1974, pp.150-152.

However, despite the serious consequences that this Article could have for the delimitation of the Aegean Sea, Greece and Turkey once again did not give it particular attention. Both countries were preoccupied with submitting proposals to delete paragraph 3 of Article 12 of the ILC draft concerning the status of portions of high seas which remained enclosed as a consequence of the territorial sea delimitation.¹⁰⁸

(b) Continental Shelf

In view of the limited extent of the territorial sea and contiguous zone, the matter of the delimitation of the continental shelf and the impact of the islands proved to be of "greater relative importance,"¹⁰⁹ while also forming an element of great controversy and dispute, since the continental shelf extends further seaward than the territorial sea, vastly increasing the possibility of overlapping zones of jurisdiction.

The problem was first raised in the ILA's Committee on Rights to the Seabed and Subsoil where it was stated that "when continental shelves overlapped, criteria for their delimitation should be studied and developed."¹¹⁰ Nevertheless, the general view until 1950 was that custom and theory did not illuminate the subject.¹¹¹

(i) *International Law Commission*. This view was reflected in the ILC's meetings in 1950 where there was reluctance to establish a general principle for delimitation since "geographical differences" prevented its formulation and there was, therefore, a belief that in case of dispute an arbitral tribunal should decide.¹¹² At the next session of the ILC, Special Rapporteur François submitted a report in which he proposed the median line as the appropriate method for delimiting the boundary between two states.¹¹³ The problem that certain islands would present in any attempt at formulating a principle of delimitation for the continental shelf was briefly pointed out.¹¹⁴ The Committee of Experts, which had proposed the median line/equidistance as well as the

108. Greece A/ Conf.13/ C.1/ L.63, Turkey, L.146.

109. Hodgson, in *Law of the Sea: Emerging Regime*, 1974, p.176.

110. ILC Report of the Forty-Fourth Conference, Copenhagen, 1950, pp.125-135.

111. See Vallat, *BYBIL*, 1946, pp.333-335. A similar view was expressed by Lord Asquith in *Petroleum Development v. the Sheikh of Abu Dhabi*, 1951, pp.144-155.

112. *YBILC*, 1950, Vol. I, Hudson, Amado, p.233. See also el Khoury who considers that the frontier of two overlapping continental shelves should be in the middle.

113. *YBILC*, 1951, Vol. II, p.102; U.N. Doc. A/CN.4/32 §339.

114. *YBILC*, 1951, Vol. I, p.288.

consideration of all the islands for the delimitation of the territorial sea,¹¹⁵ stated that it considered it important to find a formula for the delimitation of the territorial waters and the continental shelf.¹¹⁶

A text for delimitation based generally on the lines proposed by the Committee of Experts was discussed by the ILC in 1953. Equidistance was accepted as the major principle for delimitation between adjacent states, while the median line remained the major rule for delimitation between opposite states.¹¹⁷ A general rule was necessary, "but it was also necessary to provide for exceptions to it...because there were cases where a departure from the general rule was necessary for fixing boundaries across the continental shelf."¹¹⁸

Therefore the phrase used in the proposed Article, "as a general rule," was not considered to be adequate and it was omitted. Spyropoulos suggested that it be replaced by the words "unless another boundary line is justified by the special circumstances."¹¹⁹ This suggestion was adopted by the Commission. According to the words of Hersch Lauterpacht, "it was at least arguable that they deprived the rule of its legal character."¹²⁰ The author of the special circumstances proviso stated that "[his] formula made it perfectly clear that only in cases where the application of the rule would lead to manifest unfairness would it have to be waived."¹²¹ Among these special circumstances was, according to Rapporteur François, the case "where a small island opposite one State's coast belonged to another; the continental shelf surrounding that island must also belong to the second State."¹²² The accompanying commentary on the draft Article which was finally adopted by the ILC said that "provision must be made for departures necessitated by any exceptional coastal configuration, as well as the presence of islands or of navigable channels."¹²³

115. *YBILC*, 1953, Vol. I, p.106. U.N. Doc.A/CN.4/61/Add.1, pp.6-7.

116. U.N. Doc.A/CN.4/61/Add.1, Report, 18-5-1953, p.7.

117. *YBILC*, 1953, Vol. I, pp.125-128.

118. *Ibid.*, p.128.

119. *Ibid.*, p.130; see also *Jan Mayen* case, Sep.Opinion of Shahabuddeen, p.137-138.

120. *Ibid.*, p.128.

121. *Ibid.*, p.133.

122. *Ibid.*, p.128.

123. *YBILC*, 1953, Vol. II, p.216, §82. See also 1954 accompanying text where "the ILC disregarded certain details mentioned by the Experts," *YBILC*, 1954, Vol. II, p.157. This probably was a reference to the Experts' views that all islands should be taken into

(ii) *UNCLOS I*. The draft Articles of the ILC formed the basis of the work of the Geneva Conference in 1958. In its proposals prior to *UNCLOS I*, the United Kingdom referred to the case of islands in relation to the delimitation of the continental shelf. It suggested that islands should be taken into account in dividing the continental shelf between adjacent or opposite states. The example given was that of a small island lying near the center line of a gulf, the whole of which was part of the same continental shelf. If such an island were to be used as a basepoint of measurement for one state or another, "the median line would be switched from the centre of the gulf to a position nearly three-quarters of the way across it."¹²⁴

The Conference was marked by a difference of opinion on the draft Article of the ILC in relation to the delimitation of the continental shelf. On the one hand, some considered the principle of equidistance as particularly important and its application as a rule of delimitation as obligatory. These states also considered the term "special circumstances" to be problematic because "it was vague and could give rise to disagreement."¹²⁵ Yugoslavia and the United Kingdom proposed to delete this term.¹²⁶ On the other hand, certain delegations pointed out that it was not "possible to provide a general rule to cover all cases."¹²⁷

During the discussions on the amendments, it became clear that most delegations were quite happy with the ILC's draft Article, including the special circumstances clause. The general feeling was that equidistance should be regarded as an "objective standard of reference" which would serve as a "guiding principle" providing states with a guideline to arrive at an agreed boundary.¹²⁸

Islands again became a matter of particular controversy. The U.K. circulated a comment on median and equidistance lines in which it was stated that the problem of islands could become acute for a continental shelf boundary because it would seem "most inequitable" if the existence of an "island or islet (which by definition needs to be only a small above-water rock or sand-

consideration. For more, see Symmons, 1979. p.167; but Delin, believes that it refers only to shoals and features such as drying rocks, *NTIR*, p.210.

124. U.N. Doc. A/Conf.13/5 and add. 1 to 4, par.(g).

125. Colombia, *UNCLOS I*, Vol. VI, p.10.

126. U.N. Doc. A/Conf.13/C.4/L.16 and add.1.

127. Venezuela, Tunisia, *UNCLOS I*, Vol. VI, pp.21-22; Denmark p.132; U.N. Doc. A/Conf.13/C.4/L.23.

128. U.S., Netherlands, *UNCLOS I*, Vol. VI, pp.94-95.

bank, possibly only a few yards long and a few feet high) should be allowed to divert a boundary" and give extensive areas of shelf to the state possessing the island.¹²⁹ Amendments to the ILC's draft Article were made by several states addressing this issue.¹³⁰

The British delegate, Commander Kennedy, when commenting upon the special circumstances, mentioned the presence of a small or large island in the area to be apportioned. He proposed that, for the purposes of drawing a boundary, islands "should be treated on their merits, very small islands or sand cays on a continuous continental shelf and outside the belts of territorial sea being neglected as basepoints for measurement and having only their own appropriate territorial sea." Under these circumstances, "a deviation from the median line would be justified, but the median line would still provide the best starting point for negotiations."¹³¹

Kennedy's opinion was welcomed by the Italian delegation which observed that a deviation from the median line could be justified because "the median line...might, if rigidly applied, lead to inequitable results and considerable technical difficulties. This could happen in the special case of islands belonging to a continuous continental shelf between two states which were opposite to each other."¹³² The suggestions of the Italian proposal as well as those of a similar Iranian proposal¹³³ aimed to clarify the extent to which islands should be seen as special circumstances. Both proposals simply referred to the mainland coast as being the appropriate baseline.¹³⁴

This point was strongly criticized by certain delegates who remarked that the proposal might be interpreted to mean that the median line "should be drawn solely on the basis of coastlines, leaving islands entirely out of account."¹³⁵ Finally, there was general disagreement with the Italian proposal that it was possible to include a provision relating to islands because, in view of the great variety of size, grouping and position of them, "it would be impossible either to include or exclude all islands on the continental shelf."

129. Brief remarks on median lines and lines of equidistance and on the methods used in their construction (1958) by Commander Kennedy.

130. e.g., U.K., U.N. Doc.A/Conf.13/C.4/L.28; Netherlands, L.23, Venezuela, L.42.

131. UNCLOS I, Vol. VI, p.93.

132. U.N. Doc.A/Conf.13/C.4/L.25 Rev; UNCLOS I, *Off.Rec.*, Vol. IV, p.93.

133. U.N. Doc.A/Conf.13/C.4/L.60.

134. Symmons, 1979, p.169.

135. UNCLOS I, Vol. VI, p.94.

The best solution was thought to be that each case should be considered on its merits.¹³⁶

The reference to "special circumstances" was included in the final text, whereas the Italian and Iranian proposals were overwhelmingly rejected.¹³⁷ The text adopted was the following:

(1) Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest point of the baselines from which the breadth of the territorial sea of each State is measured.

(2) Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest point of the baselines from which the breadth of the territorial sea of each State is measured.

(3) In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this Article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land."¹³⁸

Article 6 has an obvious similarity with Article 12 of the Territorial Sea Convention. As was remarked, "the two Articles are exactly equivalent in their effect"¹³⁹ because the principle that they follow is identical. Article 6 has three elements. These are: (a) agreement between the parties, (b) median line or the principle of equidistance, and (c) special circumstances. Agreement can be used to determine the continental shelf between the two parties. "In theory opposite or adjacent States could agree on any boundary they wished without

136. U.S., *ibid.*, p.95; see also Gutteridge, *BYBIL*, 1959, p.120.

137. See Whiteman, *AJIL*, 1958, pp.648-654.

138. For the *opinio juris* during 1958, see Young, *AJIL*, 1958, p.737.

139. Padwa, *ICLQ*, 1960, p.638.

regard to the median line or any other principle but in practice this seems unlikely to happen."¹⁴⁰ If no agreement can be reached, the median line or the principle of equidistance is to be applied, provided that there are no special circumstances.¹⁴¹

The existence of islands, although not automatically a special circumstance, could fall within this proviso.¹⁴² Unfortunately, the 1958 Geneva Conference "found itself unable to include in the Convention any specific provisions about the presence of islands on the delimitation of the boundaries of the continental shelf."¹⁴³ Moreover, it did not spell out any criteria in accordance with which islands could constitute "special circumstances." Therefore, the onus of defining the aforementioned term and ascertaining how it should be applied passed to the arbitral courts and the ICJ as well as state practice.

4. GREECE AND TURKEY IN UNCLOS I

Once again, Greece and Turkey did not show any particular interest in the discussions of the Conference over the continental shelf. Both countries, however, expressed their support for the Yugoslav amendment deleting the reference to special circumstances.¹⁴⁴ As Greece commented in the First Committee, "special circumstances were assumed to be objective and thus to be known to all." However, this "objective character" of the special circumstances was not so apparent in the discussion of the ILC.¹⁴⁵

Throughout UNCLOS I, Greece manifested an interest in restricting as far as possible the areas of coastal state national jurisdiction. The reason was that any such extension would have affected the high seas and consequently would have undermined the freedom of navigation. It is important to note that, while Greece admitted that according to its municipal law the breadth of the Greek territorial waters was six miles, it also stated that it was ready to amend the law and revert to three miles if general agreement was reached upon this breadth.¹⁴⁶

140. Gutteridge, *BYBIL*, 1959, p.120. See Bowett, 1982, p.149.

141. UNCLOS I, Vol. VI, p.91.

142. See Hilmy, *Th.Ac.*, 1977, p.507. See also Bowett, 1982, p.153; O'Connell, 1982, p.718.

143. Gutteridge, *BYBIL*, 1959, p.120. See Oda, *JapAil*, pp.281-283.

144. UNCLOS I, *Off.Rec.*, Vol. III, Greece, pp.189,192; Turkey, p.190.

145. See Tanja, 1990, fn.119, p.42.

146. *Ibid.*, pp.21-22.

On the other side, Turkey was more concerned with the provisions of the Conference concerning the legal status of straits and passage through them. As far as the territorial sea was concerned, in 1956 the Turkish permanent mission to the U.N., in a *note verbale* commenting on the draft Article of the ILC concerning the breadth of the territorial sea, pointed out that the Turkish authorities were "of the opinion that the twelve mile limit has already obtained the general practice necessary for its acceptance as a rule of international law."¹⁴⁷ During the Conference, Turkey stated that it was prepared to accept the three-mile limit if it was generally agreed upon. In the absence of a general rule, Turkey announced that it would have the right to invoke the principle of reciprocity towards states claiming territorial sea areas wider than three miles.

C. THE EXPLORATION OF THE GREEK CONTINENTAL SHELF AND THE FIRST CONTINENTAL SHELF DELIMITATION CASE

1. THE EXPLORATION OF THE GREEK CONTINENTAL SHELF AND THE STATUS OF INTERNATIONAL LAW

By 1961, the Greek government had started geophysical exploration in the Aegean in order to discover potential oil fields. Between 1968 and 1972, oil exploration licenses were granted by the Greek government to multinational companies to explore and exploit areas of the northern, central and southern Aegean.¹⁴⁸ During the same period, various issues concerning the international law of the sea were rather unclear. UNCLOS II failed to agree upon an outer limit of the territorial sea.¹⁴⁹ As regards continental shelf delimitation, after the conclusion of the Geneva Convention on the Continental Shelf in 1958 many coastal states established continental shelves. This resulted in a limited delimitation practice which was too diffused to enable the identification or even crystallization of rules of customary law.

147. *YBILC*, Vol. II, p.74, Doc.A/CN.4/99.21.

148. See *EtK*, i) 1968, A' 227, to Texaco, ii) 1970, A' 63, to ADA Oil, iii) 1970, A' 67, to Oceanic Exploration Company, iv) 1970, A' 260, to Texaco, v) 1971, A' 217, 1972, A' 99, to Anschutz Overseas Corp., vi) 1971, A' 244, 252 and 260, to Chevron Oil. See also Basic Oil Laws and Concession Contracts, Suppl. 30 (An-Car, 1970); Suppl.26 (Prinos Concession, 1975).

149. O'Connell, 1982, pp.532-533; Churchill and Lowe, 1988, pp.66-67.

The deficiencies of Article 6 of the Continental Shelf Convention in relation to the exact character and meaning of the special circumstances proviso were addressed to some extent. This resulted in a peculiar situation where, despite the fact that in most of the maritime delimitation agreements there were usually references to Article 6, a residual equidistance line was employed in most of them.¹⁵⁰ However, these were only distinguishable trends in practice and not an established *opinio juris*. As was later observed in 1968 by a judge of the ICJ

so far as there is no precedent at all in fact, success or failure of proving special circumstances cannot but depend upon whether or not the mutual consent of the States concerned is obtained unless decided by other means such as arbitration or the International Court of Justice.¹⁵¹

The problems, and especially the vagueness, of certain terms of Article 6 of the Geneva Convention on the Continental Shelf were eventually explored by the International Court of Justice in the *North Sea* cases.

2. THE NORTH SEA CASES

This was the first judgment of the ICJ dealing with maritime delimitation. The cases were brought to the ICJ by the Netherlands and Denmark against the Federal Republic of Germany. The Court was requested to decide what the applicable principles and rules of international law were and not to delimit the actual boundaries between the three countries.¹⁵² The relevance of this judgment to the situation in the Aegean Sea is not obvious at first sight. The question of the influence of islands in the delimitation of the continental shelf was not directly faced by the ICJ, despite the fact that the parties had presented extensive arguments on the matter¹⁵³ since there were islands lying off the coasts of all three parties to the case.

One important element which has direct relevance to the Aegean dispute is the fact that the ICJ's judgment was made by reference to customary international law.¹⁵⁴ Given the fact that the Geneva Convention is not applicable

150. Tanja, 1990, pp.61-62.

151. Oda, *JapAIL*, 1968, p.283.

152. Art. 1 of the special agreements between the governments of Denmark, the Netherlands and the Federal Republic of Germany.

153. e.g., *ICJ Pleadings, The North Sea Continental Shelf Cases*, (hereafter called *North Sea, Pleadings*) Vol. I, Germany, pp.50, 64, 69-70, 72; Denmark-Netherlands, pp. 210-211, 214, 533-535.

154. *North Sea*, §26.

between Greece and Turkey, customary international law constitutes the basis on which the legal merits of their respective positions have to be estimated. Far more important, however, is the fact that the *North Sea* cases marked the beginning of an epoch in maritime delimitation, since the Court was formulating rules of general application and the judgment "had a profound effect upon ideas concerning the basis of title."¹⁵⁵ The rules of maritime delimitation would not be as they were before 1969.

(a) *Apportionment and Delimitation*

According to Germany's arguments, the North Sea represented a special case of a shallow sea which overlies a single continental shelf "which must be apportioned among the coastal States."¹⁵⁶ Therefore, the application of the equidistance method could not be employed because it would not apportion a just and equitable share to Germany since it was just one method among others of attaining a just and equitable share.¹⁵⁷ By "just and equitable share" was meant a legal rule prescribing "equitably" the share to be allotted to each state, i.e. with "impartial reason and fairness according to the weight of all factors pertinent to the right of the State over the submarine areas before its coast."¹⁵⁸ Denmark and the Netherlands characterized this proposition as an "inadmissible basis of sharing out the continental shelf like a cake."¹⁵⁹

The Court marked the legal background of maritime delimitations by rejecting the German claim of an award of a just and equitable share of the shelf areas. Delimitation could not amount to "the determination *de novo* of an area appertaining to a State" and therefore could not be the same thing as awarding a just and equitable share of a previously undelimited area.¹⁶⁰ This theory established a clear separation between apportionment and delimitation. This is a distinction which was only implied in Article 6 of the Geneva Convention, where the words "the boundary of the continental shelf appertaining to each State shall be determined..." can be considered as referring indirectly to the area already apportioned to a state.¹⁶¹ By apportionment is meant "the

155. Evans, 1989, p.46. But as to the uncertainty of the North Sea cases delimitation and the function of international law to provide security and to avoid chaotic or confusing phenomena, see Merrills, *Mod.LR*, 1978, pp.641-653.

156. *North Sea, Pleadings*, Vol. I, p. 76.

157. *Ibid.*, p.61.

158. *Ibid.*, p.392.

159. *Ibid.*, p.173.

160. *North Sea*, §18,39.

161. O'Connell, 1982, p.692; see also Jennings, *ICLQ*, 1969, pp.821-825.

ascertainment of the areas of seabed respectively appertaining to neighbouring States which are linked by a common continental shelf," whereas delimitation is the process of fixing the actual boundary between those states.¹⁶² Thus, delimitation specifies where areas appertaining to each state end.

According to the Court, a common sea-bed is apportioned between neighboring states "by reference to principles which are intrinsic in the notion of the continental shelf" doctrine.¹⁶³ These "intrinsic principles" are: "the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea." These rights "automatically preordained" the extent of the areas apportioned because they exist "*ipso facto* and *ab initio*, by virtue of the state's sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources."¹⁶⁴ These rights are "inherent," they do not have to be "constituted," they are "exclusive" and they do not depend on their "being exercised."

When it comes to fixing in precise detail the actual boundary, another process which has its own rules comes into play, namely, delimitation. Consequently, Germany's claim had no basis because there was nothing to divide between the three countries.¹⁶⁵

(b) Natural Prolongation

The Court, in explaining the character of the rights over the continental shelf, referred to the shelf as the "natural prolongation" of the state territory.¹⁶⁶ This proved to be a notion which dominated the whole judgment in the *North Sea* cases.

...more fundamental...appears to be the principle of the natural prolongation or continuation of the land territory or domain, or land sovereignty of the coastal State, into and under the high seas, via the bed of its territorial sea...What confers the *ipso jure* title which international law attributes to the coastal state in respect of its continental shelf is the fact that the submarine areas concerned may be deemed to be actually

162. On apportionment and delimitation, see *North Sea*, Diss.Opinion Morelli, pp.216-217.

163. O' Connell, 1982, pp.691-692.

164. *North Sea*, §19.

165. *Ibid.*, §20.

166. It first appeared in the Truman Proclamation but not in the ILC and UNCLOS I, *Tunisia-Libya*, §43.

part of the territory over which the coastal State already has dominion—in the sense that although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea.¹⁶⁷

The continental shelf areas were considered to be connected with the rights that a state can have over “stretches of submerged land.”¹⁶⁸ Thus the entitlement of the coastal state to the sea-bed off its coast was not of a maritime nature but, rather, was based on the physical fact that these submarine areas constitute a natural extension of its land territory.¹⁶⁹ In case of competing claims between two states over a continental shelf, the disputed area can be said to appertain to that state which is able to prove that the area is a natural extension of its land territory, even if the area is closer to the other state.¹⁷⁰

The meaning of natural prolongation was not made clear. No definition was given by the Court of a concept so fundamental as to govern the whole delimitation process. Some indications, however, as to its meaning can be found. The case of the Norwegian Trough which represents a break into the sea-bed of the North Sea was used as an example. The Court stated that, in the agreements between Norway and other bordering states, no account was taken of it, which had the result that the shelf areas separated from the Trough cannot “in any physical sense be said...to be its natural prolongation.”¹⁷¹ With this *dictum*, the Court was in no way objecting to the agreements.¹⁷² It was simply implying that the natural prolongation is connected with controlling physical features of the sea-bed. What the ICJ regarded as the *ipso jure* title of the coastal states was “the *naked* concept of the continental shelf.”¹⁷³

In this way, the delimitation was “limited to discovering how far the natural prolongation of each of the two States extends under the sea.”¹⁷⁴ The continental shelf in legal terms was assimilated with the actual continental shelf in geological or geomorphological terms because it was a fact of nature

167. *Ibid.*, §43.

168. *North Sea*, §96.

169. Hutchinson, *BYBIL*, 1984, p.136.

170. *North Sea*, §43.

171. *Ibid.*, §45. See also Young, *AJIL*, 1965, p.511.

172. The position of the Norwegian government is that the Trough does not interrupt the continuity of the North Sea continental shelf, Bowett, 1967, p.39.

173. Friedmann, *AJIL*, 1970, p.235.

174. Weil, 1989, p.23.

that justified the right to the legal shelf.¹⁷⁵ Thus, it seemed that delimitation, instead of being the application of the law to the facts, was the application of the facts to the drawing of a natural boundary. At first sight, this approach was open to the criticism that there was no delimitatory law at all and that the fixing of boundaries was passing from the hands of the lawyers to the hands of scientists. Despite the declaratory character of the natural prolongation principle, it was not tantamount to the rejection of other delimitation criteria of a more "legal" nature. Turkey was impressed by the natural prolongation concept which was to form the basis of most of its arguments in the first years of the Aegean Sea conflict.

(c) *Equidistance Method*

In its search for other criteria, the Court tried to clear the legal position regarding the equidistance method. Equidistance is a notion that greatly influenced Greek arguments. The Court accepted the practical convenience and certainty of application underlying the idea of equidistance but stressed that if it were to be a rule of law it had to be founded on some factors other than mere advantage.¹⁷⁶ Since the Geneva Convention was not applicable between the parties, the question was whether the equidistance method was part of the *corpus* of general international law, either as a codification of customary law as an a priori accompaniment of basic continental shelf doctrine or because it had been translated into customary law.

The latter possibility was rejected by the Court, which did not think that Article 6, being "only conventional or contractual in its origin," had been accepted in 1969 by the *opinio juris* as being a rule of customary international law, binding on all States.¹⁷⁷ Denmark and the Netherlands maintained that only the use of the equidistance method could achieve the test of "closer proximity" which was basic to the continental shelf doctrine. This test meant that delimitation "must be effected by a method which will leave to each one of the States concerned all those areas that are nearest to its own coast."¹⁷⁸ The Court admitted that, in fact, "the greater part of a State's continental shelf areas will...be nearer to its coast than to any other."¹⁷⁹ It refused, however, to

175. On the physical characteristics of the continental shelf, see Jennings, *ICLQ*, 1969, pp.826-830.

176. *North Sea*, §22,53,55.

177. *Ibid.*, §71.

178. *North Sea* cases, §39.

179. *Ibid.*, §40. See also *North Sea*, Diss.Opinion Morelli, pp.201-202.

let this dominate the delimitation process by observing that, when Article 6 speaks about parts of the continental shelf "adjacent to" a territory of a state, it does not necessarily mean simply "near," because the two notions of adjacency and proximity are not identical.¹⁸⁰

The reason why the Court rejected equidistance as a method of general application was that "the use of this method...can under certain circumstances produce results that appear...to be extraordinary, unnatural or unreasonable,"¹⁸¹ since "the slightest irregularity in a coastline is automatically magnified by the equidistance line as regards the consequences for the delimitation of the continental shelf."¹⁸²

The Court, however, accepted that under two circumstances, namely, the case of opposite states and that of the delimitation of the territorial sea, the use of the equidistance line was welcome. Whereas in the case of adjacent states "a lateral equidistance line often leaves to one of the States concerned areas that are the natural prolongation of the territory of the other,"¹⁸³ in the case of opposite states, the prolongations of their territories "meet and overlap and can therefore only be delimited by means of a median line" which divides equally between the two opposite countries "areas that can be regarded as being the natural prolongation of the territory of each of them."¹⁸⁴

Equally distinct is the case of delimitation between adjacent territorial waters drawn according to the equidistance method. The Court put forward two explanations in order to justify this view.¹⁸⁵ The first was that the distorting effects of equidistance "are nevertheless comparatively small within the limits of territorial waters but produce their maximum effect in the localities where the main continental shelf areas lie further out"¹⁸⁶. The second reason was the difference between the "multi-purpose jurisdiction of the territorial sea and the strictly functional jurisdiction of the continental shelf."¹⁸⁷ Thus, according to the Court, the territorial sea was not "considered to be analogous to that of the continental shelf."¹⁸⁸ Therefore, we can conclude that the equi-

180. *North Sea*, §42; Jennings, *ICLQ*, 1969, pp.825-826.

181. *Ibid.*, §24.

182. *Ibid.*, §89,a.

183. On lateral boundaries, see Grisel, *AJIL*, 1970, pp.584-593.

184. *North Sea*, §57-58.

185. None of which is considered to be convincing according to Weil, 1989, p.139.

186. *North Sea*, §59.

187. Weil, 1989, p.140.

188. *North Sea*, §80.

distance method was accepted by the Court as a rule of customary international law for delimitation of territorial waters between adjacent states.

(d) *Equitable Principles*

The Court spelt out the legal obligation of the parties in delimitation agreements to respect and follow certain fundamental rules, namely, equitable principles, in order to reach an equitable result.¹⁸⁹ These equitable principles "form a body of ascertainable rules capable of application."¹⁹⁰ The use by the Court of this proclamation was "the first significant step in conceding a role to equitable principles in the delimitation of the continental shelf."¹⁹¹ A decision made by any court has to be just and, therefore, equitable. By this, the ICJ did not mean that equity is similar to a decision *ex aequo et bono*.¹⁹²

The role of equitable principles was connected with the unwillingness of the Court to employ only one method of delimitation because "there is no logical basis for this, and no objection need be felt to the idea of effecting a delimitation of adjoining continental shelf by the concurrent use of various methods."¹⁹³ The parties have to take all the circumstances into account and for "this purpose the equidistance method can be used, but other methods exist and may be employed, alone or in combination, according to the areas involved."¹⁹⁴

According to the Court, attention has to be drawn to the result to be achieved in accordance with equitable principles and not to the method,¹⁹⁵ and it is obvious that "it is the application of principles that had to yield the result."¹⁹⁶ Nevertheless, "equity does not necessarily imply equality" because there can never be a "question of completely refashioning nature...it is not a question of totally refashioning geography."¹⁹⁷

189. *Ibid.*, §47,85,86.

190. Evans, 1989, p.71.

191. O'Connell, 1984 p.694; Rothpeller, *NTIR*, 1972, pp.89-91.

192. But see Friedmann, *AJIL*, 1970, pp.234-236.

193. *Ibid.*, §90.

194. *Ibid.*, §85,b.

195. "The goal referred to was the application of equitable principles not the solution itself," Evans, 1989, p.81.

196. Evans, 1989, p.71.

197. *North Sea*, §91.

(e) *Special and Relevant Circumstances*

What has to be taken into account are "the means whereby the delimitation can be carried out in such a way as to be recognized as equitable."¹⁹⁸ The Court did not think the special circumstances proviso was sufficient to ensure an equitable result. The existence of special circumstances was related only to the use of the equidistance method.¹⁹⁹ That was the reason why the Court refused to examine the German claim which could have relevance to the specific problems found in the Aegean Sea, namely, that the North Sea is a "well enclosed sea" constituting *per se* special circumstances.²⁰⁰

An equitable result was to be ensured by the relevant circumstances which could be used together with equity.²⁰¹ The term "relevant circumstances" was not considered to be identical with the meaning of "special circumstances" in Article 6 of the Continental Shelf Convention. The latter refers to the special characteristics of the area of delimitation which have to be taken into account in order to justify a deviation from the principle of equidistance. The former refers to all those factors which are relevant to the delimitation area and have to be taken into account in order to determine its particular characteristics and consequently the method of delimitation.²⁰²

The localization of the relevant circumstances has the character of an objective assessment of all the factors that can influence the delimitation of an area. Although the Court said that there was no legal limit to the considerations to be taken into account for the purpose of making sure that equitable principles would be applied,²⁰³ it mentioned in very general terms four sets of relevant circumstances, although not all of them were treated equally. These were:

- geology, which was emphasized by the Court as the physical fact out of which the institution of the continental shelf had arisen,

198. *Ibid.*, §92.

199. *Ibid.*, §82; See also *North Sea*, Diss.Opinions Tanaka, p.186, Lachs, p.239.

200. *North Sea, Pleadings*, Vol. I, p. 206; also Denmark and the Netherlands which claimed that only small insignificant islands and certain peninsulas (promontories) can constitute special circumstances, p.527.

201. *North Sea*, §101.

202. See Rozakis, [2], 1989, p.21.

203. *North Sea*, §94.

- geographical configuration which probably included the special circumstances of Article 6 of the Geneva Convention,²⁰⁴
- unity of deposits,²⁰⁵
- and reasonable degree of proportionality between the lengths of the coastlines of each state and the extent of the continental shelves appertaining to them.²⁰⁶ This is the final "test" to be applied to a delimitation in order to determine if it has been done in accordance with equitable principles. The Court did not require an exact relationship between the coastlines and the continental shelf "but a reasonable one...[it] suggested referring not to the actual coastal lengths, but to their stylized lengths, measured according to the general direction of the two coasts."²⁰⁷

(f) Islands

As islands are the basic geographical features in the Aegean Sea, the Court's views on them could have been applied in the Aegean. However, though the Court had the opportunity to discuss this matter it avoided the subject, despite the presence of large islands which had the "size, population and economic significance to entitle them to territorial waters and contiguous zones."²⁰⁸ All that the International Court of Justice was prepared to say on the question of islands was that

The continental shelf area of, and dividing, opposite States can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets,

204. *North Sea*, §101, D,1.

205. The negotiated Danish-German boundary after the judgment took into account Denmark's existing oil fields, Smith, in *Ocean Development*, 1983, p.532, fig.1; Auburn, *AdVölk*, 1974, pp.29-30.

206. See Evans, *ICLQ*, 1991, p.6. Also on equidistance and relevant circumstances, p.15.

207. Weil, p.237. See also arguments advanced by Germany as to the coastal front, in *North Sea, Pleadings*, Vol. I, pp. 84, 89, 428-429, 433; examples with maps, pp.40 (fig.3), 427 (fig.1 and 2), 428 (fig.3). See Denmark's counter argument on pp. 212, 214.

208. The islands of Sylt and Bokrum; Goldie, *NYBIL*, 1973, pp.244-245. See also Karl, who maintained that "while this assertion may be partially true if Sylt and Bokrum were the only islands to be given effect, the configuration of the Frisian islands as a group would dictate that if one island is to be given effect then all should be given effect," *AJIL*, 1977, p.647, fn.22.

rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved.²⁰⁹

The importance of this *dictum* appears to be that within the scope of Article 6, Paragraph 1, concerning the delimitation of the continental shelf between two opposite states, islands do not constitute special circumstances as do islets and rocks. *A contrario*, islands have to be taken into consideration for the drawing of the median line.²¹⁰ "So only small and insignificant insular formations which grossly distort a reasonable and notional mainland-based on equidistance delimitation—are to be considered special circumstances."²¹¹

Nevertheless, it has been argued that sometimes islands in relation to the equidistance line "have the potential to produce equally inequitable results" with mainlands which have convex or concave coastlines. In such a case, and according to the Court's adoption of the criterion of equitable principles, islands "should be given less than full effect in continental shelf delimitations" and their "presence is just one additional factor to be considered in assessing the relevant circumstances."²¹²

What is much more important in relation to islands is an opinion expressed by the Court concerning insular shelves. More specifically, Article 12 of the Geneva Continental Shelf Convention permits reservations to be expressed to all the articles of the convention except to Articles 1 to 3.²¹³ According to the Court, this special status preventing reservations only applies to rules of general or customary law and obligations "which, by their very nature, must have equal force for all members of the international community and cannot therefore be the subject of any right of unilateral exclusion."²¹⁴ According to this interpretation, Articles 1 to 3 were regarded "as reflecting,

209. *North Sea*, §57.

210. See O'Connell, 1982, p.718; Dipla, 1984, p.168; Roukounas, Vol. II, 1982, p.273, Ely, *InLaw*, 1972, p.224.

211. Symmons, 1979, p.171. But see Goldie, *NYIL*, 1973, p.243; See also Delin, *NTIR*, 1977, p.214.

212. Karl, *AJIL*, 1977, pp.648-649. But Symmons, "this dictum of the International Court of Justice was prefaced by the strong statement that there can be 'no way of complete refashioning nature...'" 1979, p.284, ff.169.

213. Article 12, 1: "At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to Articles 1 to 3 inclusive."

214. *North Sea*, §63.

or as crystallizing, received or at least emergent rules of customary international law relative to the continental shelf."²¹⁵

Article 1 of the Geneva Continental Shelf Convention expressly defines the term "continental shelf" as referring to the "submarine areas adjacent to the coasts of islands." Therefore, and since the opinion expressed was declaratory of customary international law, continental shelf rights are not only attributed to the islands of states which are party to the Convention, but "this is also the case with countries which are not bound by the Convention."²¹⁶

Since the entitlement of islands to a shelf is part of customary law, it can be concluded that the basic rules of delimitation which are applicable to the mainland can apply to islands as well. Therefore, the principle of natural prolongation according to the 1969 judgment could mean that the question of what shelf area is attached to an island "is primarily a question of physical fact. The geological evidence will indicate the extent to which the island is naturally prolonged under the sea so as to indicate the limits of its geological extension."²¹⁷

In such a case, the application of equitable principles and the consideration of relevant circumstances has to preserve mainly the primary rule of natural prolongation of the island. Nevertheless, some writers think that "natural prolongation...subordinates the consideration of small, offshore, or dependent islands to that of the mainland or the major islands of an island or an archipelago State, in any continental shelf demarcation."²¹⁸ In the 1969 case, however, the Court did not make any statement pertinent to the question of whether all islands can be considered for the purpose of delimitation or if they must have some special characteristics in order to be taken into account.

(g) Effect of the Judgment on Greece and Turkey

The ICJ in the *North Sea* cases was, in practice, formulating rules of customary international law. The characteristic of these rules is that they have to apply in many different situations and, therefore, they are general and sometimes contain a certain element of vagueness. This characteristic can offer freedom for different interpretations of the criteria laid down in the *North Sea* cases. This is actually what happened with Greece and Turkey. Of

215. Ibid., §63.

216. O'Connell, 1982, p.714; also, p.475.

217. Bowett, 1982, p.162.

218. Goldie, *NYIL*, 1973, p.251.

course, in 1969, there was no problem regarding the delimitation of the continental shelf of the Aegean and, therefore, the views of the states were not expressed during that period. However, a careful reading of the arguments of the two parties during the birth of the Aegean continental shelf problem four years later shows that they were influenced by different findings of the *North Sea* cases.

Greece was impressed by the fact that the Court regarded the median line delimitation between opposite states as different from a lateral delimitation between adjacent states. The equal division of the overlapping areas could be achieved between opposite states with the median line. The ultimate object of the delimitation, "to seek not one method...but one goal"²¹⁹, namely, the equitable determination of the areas appertaining to different jurisdictions, could be achieved through the method of the median line. The fact that the special and unusual features which should be ignored in such a case were limited to the genus of minor features such as islets and rocks was a further reason for Greece to rely on the Court's finding.²²⁰ A last, but by no means least, element which influenced Greece was that Article 1 (b) concerning insular continental shelves was considered as part of customary international law.

Turkey, on the other hand, was happy with the natural prolongation criterion. The dismissal of Article 6 of the 1958 Continental Shelf Convention and the use of other concepts in the delimitation were interpreted as giving better chances to the Anatolian peninsula to claim overlapping areas of the Aegean continental shelf. In general, the judgment was more welcome in Turkey than in Greece. The reasons will be shown in the second part of this work.

219. *North Sea*, §92.

220. See Bowett, 1982, p.266.

PART II
THE PERIOD BETWEEN
1973 AND 1986

4. An Era of New Problems, 1974 to 1976

INTRODUCTION

Since 1973, an almost permanent state of tension has existed between Greece and Turkey. In addition to Cyprus, another "apple of discord" between the two countries has proved to be the Aegean Sea, especially the potentially oil-rich continental shelf. In 1973, commercially significant deposits were discovered off the island of Thassos by Oceanic Exploration of Denver, Colorado. In 1986, the oil field, now called Prinos, provided a maximum output of 28,000 barrels a day and, in 1993, total deposits were estimated to be 20 million barrels.¹ Very close to the Prinos area is a small natural gas field which is commercially exploitable. The quality of the oil is very poor because it is high in sulfur. The oil and gas fields in the Thassos area are the only commercially exploitable fields that have been discovered after nearly eighteen years of exploration in the Aegean. Nevertheless, since the discovery of the Prinos field, relations between the two countries have sometimes reached a level so low that even armed conflict has seemed possible.

Both countries are almost entirely dependent on oil imports. During the period of the first Arab oil embargo and the first energy crisis, with oil prices rapidly rising, any resources in the continental shelf looked attractive. Furthermore, in 1974 a certain confusion existed in public international law concerning delimitations of maritime zones between states. Although Article 6 of the Geneva Convention on the Continental Shelf of 1958 had established equidistance as a flexible method of delimitation, which would allow a given solution to take into account the particular facts of each case,² it was not accepted as a rule of general or customary international law by the ICJ in the *North Sea* cases.³ The Court's decision that the application of the 1958 provision on the delimitation of the continental shelf should be based only on treaty relationships provided the perfect backdrop for the development of the

1. See *To Vima* (Athens newspaper), 20 June 1993, p.A.17.

2. Weil, 1989, p.145.

3. See *supra*, pp.82-83.

dispute. Greece had become a party to the Continental Shelf Convention in 1972. Turkey was not and is not a party to it.⁴

The need to have rules for delimitation was and still is imperative. As Judge Sorensen prophetically said in the *North Sea* cases, "the clearer the ad hoc rule, the more automatic its application, the less the seed of discord is sown." And the seed of discord between Greece and Turkey was already there. Why? The first answer might be the lack of energy resources. But behind this consideration lies the fact that the limited, functional character of sovereignty over the continental shelf today can be transformed into full sovereignty in the future. And this was more apparent in a case such as the Aegean where the two countries speak not only for their economic interests, but often associate the continental shelf regime with their security and sovereignty.

The confusion existing in the field of continental shelf delimitations was more than apparent. The title to continental shelf in a physical sense, the criteria for the discovery of the natural prolongation which already belonged to a state, the significance of geology or geomorphology, the distinction between apportionment and delimitation, the idea of establishing *suum cuique tribuere ipso facto et ab initio*, the role of equitable principles, the special and relevant circumstances, the method of equidistance—all these principles, rules, criteria and methods did not offer any concrete guidance for a delimitation, since each party could interpret them in a way favorable to its own interests.

The confusion, however, was evident in other fields of the international law of the sea as well. The exploitability criterion of Article 1 of the Continental Shelf Convention, if understood in terms of more advanced standards of technology and economy, meant that "all the submarine areas of the world have been theoretically divided among the coastal states at the deepest trenches."⁵ Many countries in Latin America and Africa have started to establish exclusive economic zone (EEZ) or exclusive fishery zone (EFZ) regimes.⁶ After decolonization, several young states appeared on the international scene, which have not participated in the previous two conferences on the law of the sea and, therefore, have had no say in the formulation of the Geneva conventions. Furthermore, many states were not satisfied with the

4. See ST/LEG/SER.E/6, p.728.

5. Oda, S., *JapAIL*, 1967, p.40.

6. Aguilar, *SDLR*, 1974, pp.581-591; See also Garcia Amador, *AJIL*, 1974.

provisions of the 1958 conventions concerning matters of overfishing and pollution.

Following a proposal of the Maltese ambassador to the United Nations,⁷ a Sea-Bed Committee was established in 1967⁸ which led the General Assembly to agree to convene a third conference with the task of producing a Convention on the Law of the Sea.⁹ The works of UNCLOS III, in which both Greece and Turkey were participants, started in the period of the genesis of the Aegean Sea problem. Thus, the diplomatic battle over the Aegean Sea proceeded parallel with another battle concerning the views and proposals of the two countries as they were expressed in UNCLOS III. Therefore, the development of the Aegean dispute will be examined together with the international lawmaking which took place in UNCLOS III. The views of the two countries, as they have been presented in their bilateral relations, will be considered jointly with their aims, as they were revealed in the works of UNCLOS III.

1. AEGEAN CONTINENTAL SHELF: THE STARTING POINT

Until 1973, the legal status of the Aegean Sea was never questioned by Turkey. The award of exploration and exploitation rights in 27 maritime areas of the Aegean to the state-owned Turkish Petroleum Company (TPAO) in 1973, without prior consultation with the Greek government, was considered by Greece as amounting to a unilateral delimitation of the continental shelf.¹⁰ The map accompanying the announcement was seen as delimiting the sea-bed between Greece and Turkey by means of a median line equidistant from the Greek and Turkish mainland, starting at the mouth of the Evros (Maritsa) River in the north and extending southwards and to the west of the Greek islands of the eastern Aegean with no regard being paid to these islands.¹¹ Moreover, some of the exploration areas lay just beyond the territorial waters of the large and populated Greek islands of Lesbos, Chios, Lemnos and Samothrace.

7. U.N. Doc. A/6695, Dr. Prado. For similar informal suggestions prior to Dr. Prado's request, see Scelle, *RGDIP*, 1955, p.5

8. GA Res. 2340 (XXII), 18 December 1967.

9. GA Res. 2750 (XXV), 17 December 1970.

10. Bowett, 1979, p.261; Phylaktopoulos, *International Lawyer*, 1974, p.433; Papa-cosma, *StudDipl*, 1984, p.303.

11. See map 3.

Greece reacted immediately and sharply in a *note verbale* which refused to accept the Turkish action as a *fait accompli*.¹² The Turkish government's reply proposed negotiations on the continental shelf question in order to find "une solution conforme aux règles du droit international"¹³, a proposal which was accepted by Greece on 24 May 1974.¹⁴ Nevertheless, on 29 May 1974, Turkey's survey vessel, *Candarli*, entered the Aegean accompanied by 32 warships and, for six days, it sailed along the areas of the high seas in which mineral concessions had been granted by Turkey. Armed forces of both countries went on alert.¹⁵ In order to scale down the tension between the two countries, the Greek and Turkish leaders met on 27 June 1974 to discuss the problem of the Aegean, but no progress was made.

The events that took place in Cyprus in July 1974 temporarily supplanted the Aegean dispute. On 15 July 1974, the military junta that had ruled Greece since 1967 attempted to overthrow the government of Cyprus by coup d'état. This gave Turkey the opportunity to invade Cyprus five days later. On the very day that Turkish troops boarded their landing boats Cyprus-bound, Turkey granted more exploration licenses in the Aegean, extending further west and south to include the continental shelf around the Dodecanese islands.¹⁶

The second Turkish unilateral delimitation was followed by an exchange of notes between the two countries. The respective views of the two parties concerning the Aegean continental shelf, expressed repeatedly during the period before and after the Turkish invasion of Cyprus, revealed two diametrically opposed positions in the field of maritime delimitations. On the one side, Greece invoked equidistance according to the Geneva Convention. On the other side, Turkey employed the natural prolongation concept as it was elaborated in the *North Sea* cases. It was a battle which pitted the system of Article 6 against the natural prolongation concept and, in many respects, constituted a prelude to the contest that followed between the so-called "pro-equidistance" and "pro-equity" groups in UNCLOS III.

12. Greek *note verbale* of 7 February 1974, *Aegean Sea Pleadings*, p. 21.

13. Turkish *note verbale* of 27 February 1974, *ibid.*, p.23.

14. Greek *notes verbales* of 24 May 1974. See also *The Times* (London newspaper), 22 May 1974, p.9 and 27 May 1974, p.3.

15. *The Times* (London newspaper), 31 May 1974, p.6; 1 June 1974, p.5; 5 June 1974, p.6; see also Kyriakou, 1986, pp.134-135.

16. *OffTuGaz.*, 18 July 1974, Decision No.7/8594 of the Turkish government.

(a) *Greek Claims*

The basic Greek argument was that islands have continental shelves on the same footing as continents.¹⁷ According to Greece, Article 1 of the Geneva Convention on the Continental Shelf refers to sea-bed and submarine areas adjacent to the coast of continents and islands without making any distinction between them. As a general rule, islands have sea-bed entitlements beyond their territorial sea. This basic concept of the continental shelf as it is enshrined in Article 1 of the Geneva Convention was regarded by Greece as codifying international law on the subject.¹⁸ It is interesting to note that Greece, during the period of the genesis of the problem in 1973-74, never mentioned the ICJ finding in the *North Sea* cases, namely, that Article 1 was considered "as reflecting, or as crystallizing, received or at least emergent rules of customary international law."¹⁹ In any case, Greece regarded Article 1 as a rule of customary international law binding upon not only states that are parties to the Geneva Convention, but upon all the members of the international community including Turkey.

Since islands have the right to form their own continental shelf, Greece considered that the delimitation of the Aegean continental shelf between the two countries is a delimitation between two opposite states. The Geneva Convention provides that, for the delimitation of the continental shelf, the same principles are available "irrespective of the continental or insular character of the territory."²⁰ Thus, the coastline formed opposite the Anatolian coasts is the coastline of the islands of Samothrace, Lemnos, Agios Eustratios, Lesbos, Chios, Samos and the Dodecanese islands.²¹

Greece claimed that the rule of international law respecting delimitations of common continental shelf boundaries between opposite states is the median line method, basing this not only on Article 6 of the Geneva Convention and international practice, but also upon the fact that it was recognized by the ICJ that a median line delimitation between opposite states produced

17. Greek *note verbale*, 7 February 1973, *Aegean Sea Pleadings*, pp.21.

18. Greek *notes verbales*, 7 February 1973, 24 May 1974, *Aegean Sea Pleadings*, pp.21,25.

19. *North Sea* cases, §63; see *supra*, pp.86-88.

20. Greek *note verbale*, 7 February 1973, *Aegean Sea Pleadings*, pp.21-22.

21. Greek *notes verbales*, 7 February 1973, 14 June 1973, *Aegean Sea Pleadings*, Georgacopoulos, *IBL*, 1978.

an equitable shelf division.²² Therefore, the continental shelf boundary that separates the two countries is a median line, every point of which is equidistant from the nearest point of the baselines formed by the eastern Greek islands and the Turkish coasts.²³ The rule of the median line applied subject to the reservation that special circumstances do not justify another boundary. The Greek islands did not constitute special circumstances because of their number, size, population and economic life.

The right of Greece to explore and exploit the natural resources of the Aegean islands is exclusive, a fact which was recognized by the Geneva Convention and the ICJ. This right means that Turkey did not have the right to undertake these activities, despite the fact that Greece did not explore or exploit these natural resources.²⁴ For these reasons, the Greek government did not accord any validity to the Turkish actions.

(b) Turkish Claims

From the communications exchanged between the two countries from the period of the creation of the Aegean dispute up to February 1975, it is obvious that Turkey did not consider the delimitation of the continental shelf as a political problem. In its *notes verbales*, it emphatically expressed the view that it approached the delimitation after considering the *conditions juridiques* and the *règles de droit international* concerning the matter;²⁵ Greek claims were dismissed on the grounds that they were "without any legal foundation";²⁶ and it was emphasized that the Turkish government was ready to protect *ses droits légitimes* to start negotiations between the two countries *dans le cadre des règles du droit international*²⁷ and, moreover, to reach an agreement *conformément aux règles du droit international*.²⁸ In the Turkish *notes verbales*, it was stated that the delimitation was according to interna-

22. *North Sea cases*, §57.

23. Greece and Turkey are adjacent states in Thrace where the two countries have terrestrial boundaries; Tzounis, O'Connell, in the 1st and 2nd Greek-Turkish meeting, 1 February 1976, in *Mediterranean Continental Shelf*, pp.1558, 1560; Georgacopoulos, *IBL*, 1978, pp.485-486, 493.

24. Greek *note verbale*, 22 August 1974, *Aegean Sea Pleadings*, pp.21-22.

25. Turkish *note verbale*, 27 February 1974, *ibid.*, p.23.

26. Turkish *note verbale*, 16 September 1974, *ibid.*, p.29.

27. Turkish *note verbale*, 5 June 1974, *ibid.*, p. 26.

28. Turkish *note verbale*, 4 July 1974, *ibid.*, p. 27.

tional law and more specifically according to the rules of the Geneva Convention on the Continental Shelf as well as the *North Sea* cases.²⁹

Turkey placed a particular emphasis on natural prolongation. According to this view, a geomorphological study of the sea-bed of the Aegean Sea shows the existence of a large shallow sea-bed which constitutes the *natural prolongation* of the Anatolian peninsula. The Greek islands constitute a geological continuation of the Turkish mainland since they are situated on the natural prolongation of the Anatolian peninsula. Their geomorphological features indicate that they do not have their own continental shelf platforms. They do not form a continuation of the Greek mainland because there are intervening high seas. Therefore, they do not have their own continental shelf in the sense of natural prolongation.³⁰

According to Turkey, the provisions of the Geneva Convention on the Continental Shelf concerning islands in the delimitation area are very general and vague. It was also argued that international practice as seen in numerous agreements all over the world did not attribute equal value to all islands regardless of their characteristics and their special location with regard to delimitation of continental shelf.³¹ The Greek arguments based on the median line were dismissed on the grounds that Article 6, which speaks about the median line/equidistance principle rule, was not part of customary international law. Even within Article 6, the median line/equidistance was considered as being subsidiary to the primary obligation to effect delimitation by agreement and to the second requirement that no special circumstances existed in the delimitation area, a view confirmed in the *North Sea* cases where the median line/equidistance was regarded not as the sole method of delimitation but simply as one method among others.³²

Moreover, in Turkey's view, even if Article 6 of the Continental Shelf Convention was considered applicable to the delimitation of the Aegean Sea, its application, and consequently the application of median line/equidistance, was subject to the presumption that another boundary line is not justified by special circumstances. The position of islands can often give rise to special circumstances and can cause problems in the delimitation area through the

29. Turkish *note verbale*, 27 February 1974, *ibid.*, p. 23.

30. Turkish *note verbale*, 27 February 1974, *ibid.*, p.23; see also Koymen, *IBL*, 1978, pp.504-506.

31. Turkish *note verbale*, 27 February 1974, *Aegean Sea Pleadings*, pp.23-24.

32. *Ibid.*, *North Sea*, §72.

creation of inequitable results. The Greek islands, given that they form a chain across the Turkish coastline, constitute a typical example of special circumstances.³³ Another element which constitutes a case of special circumstances is the specific nature of the Aegean, which can be considered a semi-enclosed sea.³⁴ The number of islands, the existence of important sea routes and the narrowness of the maritime areas constitute elements which affect Turkey's existing rights and interests and which influence a possible delimitation.³⁵

The view expressed by the Turkish side concerning the relation of the two countries as opposite or adjacent states should be given particular attention. In one of the meetings between the two sides, Ali Suat Bilge, on behalf of the Turkish side, presented an informal draft for discussion in which he implied that Greece and Turkey are laterally aligned states because they are separated by a land border which reaches the sea south of Thrace. Therefore, "it is a lateral line which must be drawn" between the two states.³⁶ This view, which was never repeated, questioned the legality of the line claimed by Turkey in the middle of the Aegean as a median line between the opposite mainlands of the two states.

The Turkish side added that the only solution which can be achieved is through negotiations which have to be conducted between the two countries. The imperative rule in delimitations is agreement, a view expressed in the Geneva Convention, exercised in international practice and confirmed by the ICJ.³⁷ Since no agreement was reached between the two countries concerning the Aegean Sea delimitation, despite the fact that Greece had been issuing exploration permits for a period of fifteen years prior to 1974, Turkey proceeded to conduct its own continental shelf delimitation.³⁸

Under these circumstances, as they were interpreted by Turkey, the meeting point of the natural prolongations of the two countries is the line in the middle of the Aegean where the submerged land masses of the adjacent mainlands meet each other. This median line ignores islands completely and

33. But see O'Connell, *Aegean Sea Pleadings*, p.93.

34. Turkish *note verbale*, 27 February 1974, *ibid.*, p.23; see also Pazarci, 1982, pp.189-190, 293-295.

35. Yolga, in *The Aegean issues: Problems and Prospects*, 1989, pp.140-141.

36. Bern, 1976, prepared by Grisel, in *Mediterranean Continental Shelf*, p.1552.

37. Turkish *notes verbales*, 27 February 1974, 5 June 1974 and 16 September 1974, in *Aegean Sea Pleadings*.

38. Turkish *note verbale*, 27 February 1974, *ibid.*

gives them only a six-mile territorial sea "and the result is to 'enclave' all the Greek islands on the east of this line."³⁹ The Greek islands were treated as mere elevations or protrusions of the Anatolian continental shelf.⁴⁰

It is important to note that, during this first period of the Aegean problem, Turkey invoked the Geneva Convention as a basis for its unilateral delimitation in the Aegean. In the following years, the Geneva Convention progressively disappeared from the Turkish arguments since the later trends that began to emerge were not favorable to Turkey. Indeed, the impact of this Convention upon the normative system of rules built up by the ICJ and arbitral tribunals has been relatively modest. Moreover, in 1974 the natural prolongation of the continental shelf of the Anatolian peninsula in its geomorphological form was the criterion for the median line drawn between the two countries.⁴¹

(c) UNCLOS III

The same approach was followed by Turkey during UNCLOS III. Particular emphasis was placed on the geomorphological nature of the natural prolongation. The Turkish delegate expressed the view that the ICJ in the *North Sea* cases considered the notion of the continental shelf to be essentially a geomorphological one. Therefore, the criterion for its definition "should be that of natural prolongation which meant an expanse of sea-bed extending to the area where the continent slope merged into the abyssal depths."⁴²

At Committee II concerning maritime delimitation, Turkey proposed a draft article which, although named generally "Draft Article on Delimitation between States,"⁴³ was intended according to the Turkish delegate "to improve upon the method of delimitation established in Article 6 of the Geneva Convention on the Continental Shelf."⁴⁴ The basic idea which pervaded the proposed article was that of agreement which was to be the only basis for delimiting the continental shelf. The reason for this approach was that under Article 6 of the Geneva Convention the parties to a dispute could either refuse

39. Bowett, 1979, p.261. See map 3.

40. Statement of the Greek delegation at the meeting of Experts of the Governments of Greece and Turkey in Bern on 19, 20 June 1976, *Aegean Sea Pleadings*, p.48.

41. Turkish *note verbale*, 27 February 1974, *Aegean Sea Pleadings*, p. 23.

42. UNCLOS III, *Off.Rec.*, I, p.169; *Off.Rec.*, II, p.213.

43. A/CONF.62/C.2/L.23; UNCLOS III, *Off.Rec.*, III, p.201.

44. UNCLOS III, *Off.Rec.*, II, p. 158.

to enter into negotiations or enter them for the sake of form, or break them off and then proceed to a unilateral delimitation.⁴⁵

Also, according to the proposed article, in the event that one of the parties "refuses to enter into or continue negotiations or in order to resolve differences which may arise during such negotiations," recourse could be made to the methods which are prescribed in Article 33 of the U.N. Charter.⁴⁶ During the Caracas Session, Turkey repeatedly expressed its belief that in case the negotiations are stalemated "some means of recourse to a legal body would be necessary."⁴⁷

The proposed article "on delimitation between States" was also a triumph of the natural physical prolongation concept. It provided that, in the course of negotiations, the parties to a dispute should consider where nature has put physical separations such as the "geological and geomorphological structure of the shelf up to the outer limit of the continental margin." Finally in a "catch-all" definition of special circumstances, these were interpreted to include the general configuration of the coastline as well as the presence of islands, islets and rocks of one state which were situated "on the continental shelf of the other."⁴⁸ Thus, the existence of islands *per se* constituted, in general, special circumstances.⁴⁹

The aim of agreement was the "arriving at an equitable delimitation."⁵⁰ Since the geographical situations of states varied extremely from one case to another, this could be the ultimate goal without the prescription of any method, such as equidistance, since "no single method could be universally applied without creating injustices." If such a method were to be adopted, it "would only create a new source of misunderstanding and conflict."⁵¹

Greece, on the other hand, avoided mentioning continental shelf delimitation in its general statement. It focused upon the extent of the territorial sea and on islands. In its draft article concerning the continental shelf which was submitted to Committee II, Greece abandoned the exploitability concept

45. *Idem*.

46. Article 3, Doc.A/CONF.62/C.2/L.23.

47. UNCLOS III, *Off.Rec.*, I, p.169.

48. Draft Article L.23, art.2; see also Turkish Reply, 16 September 1974, *Aegean Sea Pleadings*, p.29.

49. UNCLOS III, *Off.Rec.*, II, p. 111.

50. Draft Article L.23, art.4

51. UNCLOS III, *Off.Rec.*, II, p.158.

in favor of more precise and objective criteria such as the breadth and the depth of the continental shelf.⁵² As concerns delimitation, Greece considered agreement to be the primary rule but, in the absence of agreement, no state was to be entitled "to extend its sovereignty beyond the median line."⁵³ Greece criticized the Turkish proposals concerning islands on the continental shelf of another state as "odd" since they implied that islands "had been placed *a posteriori* as an afterthought of the creator."⁵⁴

2. OTHER RELATED PROBLEMS

In the wake of the Cyprus crisis, a new political environment emerged in which the Aegean became the potential flashpoint. Greece started to fortify the eastern Aegean islands⁵⁵ while Turkey occupied nearly 40% of Cyprus. The restoration of democracy and the creation of a civilian government in July 1974 under Constantine Karamanlis did not change the situation. Until the end of 1974, diplomatic exchanges between the two countries, designed to narrow the dispute over the continental shelf, tended to emphasize the disagreement rather than solve the problem.⁵⁶ During this period, it seemed that buried in the legal problem of the delimitation of the continental shelf were the original claims of contest of the Lausanne territorial settlement.

Numerous statements were made by Turkish leaders which caused Greece to fear an attack. In these statements, Turkish politicians questioned the Greek nature of the Aegean islands and often claimed that the Greek islands of the Aegean close to the Turkish coastline were part of Anatolia where Turkish rule should be restored. Characteristic of these statements was one made by the minister of defense of Turkey, Sancar, in which he said that the balance of power in the Aegean was in Turkey's favor to such an extent that "the eyes and thoughts of the old Turkish inhabitants of the islands remain set on resettlement of the opposite coasts, which lie only a few miles apart."⁵⁷ In Greece too, the opposition parties, and especially the leader of the Panhellenic Socialist Movement (PASOK), Andreas Papandreou, asked the

52. Article 1 of Doc.A/CONF.62/C.2/L.25; UNCLOS III, *Off.Rec.*, III, p. 202.

53. *Ibid.*, Article 6.

54. UNCLOS III, *Off.Rec.*, II, p.153.

55. See letters of Turkey and Greece to the U.N. secretary general, U.N.Doc S/11668/9.4.1975, U.N.Doc S/11672/14 April 1975, U.N.Doc S/12176/13 August 1976.

56. See exchange of *notes verbales*, *Aegean Sea Pleadings*, pp.23-29.

57. To the periodical *Yanki*, 20 January 1975. For an overview of these statements see, Turkish Officials Speak on Turkish Aims.

government to change its restrained policy towards the perceived Turkish threat.⁵⁸

The hostility between the two countries was more than apparent in the proceedings of UNCLOS III as well. After the First Session in New York in 1973 where discussion had centered on procedural and organizational matters,⁵⁹ at the Second Session in Caracas the Conference started with general statements. Although these statements referred to the general legal policy objectives of each country, Turkey found the opportunity to distribute to the delegates a map of the Aegean Sea which showed, according to Turkey, how an extension of the territorial sea by one of the two states in this area could upset the existing balance and harm the legitimate interests of the other state.⁶⁰ The distribution of the map was considered by the Greek delegate as a "disruptive action" by Turkey. He therefore asked the Conference to debate the matter.⁶¹

The fact that the meetings in Caracas took place in July 1974,⁶² during a period when the Cyprus problem brought the two countries very close to confrontation, is important.⁶³ On several occasions during the work of UNCLOS III, the delegates of the two countries openly debated each other.⁶⁴ More often than not, their proposals were made only in order to oppose those of the other party.⁶⁵ These bilateral polemics were encouraged to a certain extent by the nature of UNCLOS III which was not only more "politicized" in nature,⁶⁶ but was much different from the traditional United Nations' treaty-making con-

58. Clogg, 1992, p.190.

59. See Hardy, *RBeldI*, 11, 1975, p. 444ff; Sohn, *HJIL*, 1974, pp.438-445.

60. UNCLOS III, *Off.Rec.*, I, p.169.

61. *Ibid.*, p.171.

62. See generally on the Caracas Session, Stevenson, and Oxman, *AJIL*, 1974, p.1ff.

63. The Greek delegate, speaking on the day of the second Turkish attack on Cyprus, on the right of islands to generate maritime zones, said that islands possess these rights "unless they were invaded and their inhabitants bombed out or otherwise annihilated—which seemed to be the way of dealing with the problem these days." UNCLOS III, *Off.Rec.*, II, p.285.

64. e.g., UNCLOS III, *Off.Rec.*, II, p.115, Turkey; p.153, Greece; p.159, Turkey; p.189, Greece; *Off.Rec.*, IV, pp.78-79.

65. e.g., UNCLOS III, *Off.Rec.*, III, A/CONF.62/C.2/L.50, Greek proposals on the regime of islands, p.227; A/CONF.62/C.2/L.55, Turkish proposals on the regime of islands, p.230.

66. Tanja, 1990, p.86.

ferences.⁶⁷ The absence of any preparatory work, such as the draft articles prepared by the ILC for UNCLOS I or the Vienna Conference on the Law of Treaties in 1969, gave the participant states almost *carte blanche* to propose new international norms and to be involved in treaty-making processes which involved equally the codification of the existing international law and its progressive development.

This situation has particular importance for the study of Greek-Turkish relations. The two countries, free to make any proposals they wished on any topic they considered relevant to their interests, were actually expressing their aims and revealing their intentions and their fears in the Aegean Sea area. A good example is their attitude towards the delimitation of maritime zones by agreement. Both countries accepted that delimitation by agreement was the ideal situation between two states.⁶⁸ Greece, however, wanted the "protection" of an objective rule such as equidistance "instead of having to negotiate on the basis of vague so-called "criteria" under economic, political or even military duress exerted by [its] more powerful but less peaceful neighbour."⁶⁹ Turkey, on the other side, thought that Greece would enter into negotiations for the sake of form, since it was not prepared really to negotiate, and proceed after the predictable failure of the negotiations to a unilateral delimitation of the Aegean continental shelf.⁷⁰

Generally, the aims of the two countries on the agenda of UNCLOS III can be summarized as follows. In the emerging regime of archipelagic waters, Greece wanted to include islands which belonged to an archipelago, in its original meaning, irrespective of whether this archipelago was "part of a State possessing a continental territory or formed a State in itself."⁷¹ It also wanted to secure for islands the same treatment as for continental territories with regard to maritime zones.⁷² The only element in Greece's aims which pre-existed in the works of UNCLOS I was that of freedom of navigation.

67. Stavropoulos, *Unitar News*, 1974, pp.16-18.

68. See *supra*, fn.65.

69. UNCLOS III, *Off.Rec.*, II, p.189.

70. *Ibid.*, p.158.

71. UNCLOS III, *Off.Rec.*, I, p. 129; see also Article 4 of the draft articles of Greece, A/CONF.62/C.2/L.22 in *Off.Rec.*, III, p. 200; see also Turkish counterclaims in *Off.Rec.*, p.273.

72. A/CONF.62/C.2/L.50 in *Off.Rec.*, III, p.227; also discussion in *Off.Rec.*, II, p.285.

Turkey, on the other hand, was more prone to confirm, as has already been seen, the geomorphological natural prolongation criterion of the *North Sea* cases.⁷³ Particular emphasis was also placed on the case of islands far from the principal territory. More particularly, Turkey wanted to introduce specific criteria, based on size and population, which would determine whether islands possessed a marine space of their own.⁷⁴ Turkish interests also centered on the regime of the enclosed and semi-enclosed seas. Turkish aims on this issue were twofold. On the one side, the Turkish delegation wanted the extended maritime zones, such as the EEZ or the continental shelf, not to apply in these seas.⁷⁵ At the same time, it wished to include in the concept of geographically disadvantaged states countries which were facing semi-enclosed seas and therefore could not have an EEZ of 200 miles.⁷⁶ By raising these proposals, Turkey hoped to be considered as a geographically disadvantaged state.

(a) *Territorial Sea*

The matter which concerned both countries most, however, was the extent of the territorial sea. While Turkish officials warned that a possible extension of the territorial sea by Greece would constitute a *casus belli*,⁷⁷ the battlefield with respect to this issue was to be found in the works of UNCLOS III. Greece supported a uniform breadth of twelve miles, whereas Turkey wanted to establish a special regime for coastal States which did not border wide oceans.

(i) *Greek Claims*. Greece regarded the rule which establishes a twelve-mile territorial sea as universally accepted. The reason for this approach was that since the Geneva Convention on the Territorial Sea and the Contiguous Zone, which failed to reach agreement on the breadth of the territorial sea, an increasing number of states, had claimed and enforced, usually without protest, territorial seas of twelve miles' breadth. A common consent among most maritime states had started to crystallize on a legally binding rule of interna-

73. See *supra*, pp.80-82.

74. A/CONF.62/C.2/L.55 in *Off.Rec.*, III, p. 230; also discussion in *Off.Rec.*, II, p.284.

75. UNCLOS III, *Off.Rec.*, II, p. 277.

76. *Idem*, pp.251, 276-277; see also, in general, Alexander, 1974, pp.201-215.

77. See, e.g., *The Times* (London newspaper), 10 June 1975, statement of the Turkish foreign minister.

tional law permitting territorial seas of up to twelve miles.⁷⁸ Therefore, Greece considered that it had the right to extend its territorial sea limits from six to twelve miles in all those areas of the Aegean where the Greek coasts faced the high seas. This position was held by the Greek military government in 1974 and remained unchanged after the restoration of democracy.⁷⁹

According to Greece, the delimitation of the territorial sea should be based on the median line or equidistance principle as it was embodied in Article 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone. It was accepted by international theory as well as practice because it was widely used in bilateral conventions. This right can be exercised unilaterally since matters concerning the territory of a state are conferred on it by virtue of international law. It is the exercise of the state's public authority and political sovereignty, *imperium*, which falls within the domain of the exclusive jurisdiction of the state.⁸⁰

The fact that many Greek islands lie close to Turkey's mainland is irrelevant to a possible extension of Greek territorial waters. The islands, which are all true islands with substantial populations, are fully entitled, according to customary international law as well as under the two Conventions, to generate their own territorial sea on the same footing as the mainland. This approach did not mean that Greece did not attribute any value to the special circumstances proviso. Rocks and islets were considered as special circumstances.⁸¹

Also, the fact that the Aegean Sea can constitute an "enclosed or semi-enclosed sea" was not considered as relevant to any possible extension of Greek territorial waters. The twelve-mile breadth of the territorial sea was universal, and its exercise was not dependent on the enclosed or semi-enclosed nature of the sea.⁸² In areas where the Greek coast faces an opposite coast, whose distance from the Greek coast is less than the sum of the width of their territorial sea, the rule has to be an interrelation of agreement and equidistance because the median line can place "States in a position of equality in relation to neighbouring States which might be tempted to bargain

78. See Doc.A/Conf.62/C.2.L22, UNCLOS III, *Off.Rec.*, III, p.201.

79. See Official Statement published in the censored Athens Press, 9 June 1974.

80. UNCLOS III, *Off.Rec.*, II, p.111.

81. *Idem*.

82. *Idem*; see also Rozakis, *The Greek-Turkish Relations, 1923-1987*, 1988, p.341.

in a legal vacuum.”⁸³ Failing agreement “reached free and under conditions of equality,” the equidistance principle should come into operation. The fact that a future extension will enclose some areas of high seas within territorial waters, whereas other areas will be part of the Greek territorial sea, is not an obstacle to transit or innocent passage through international straits.⁸⁴

A final argument of Greece was that four-fifths of the Greek population live in or near the coasts of the Aegean while an important segment of 1,500,000 of the total Greek population of ten million inhabits the islands. Therefore, the Aegean is of vital economic significance for the Greek world as it concerns commercial routes, ports, tourism and even survival.⁸⁵

The Turkish threat that any extension of the territorial sea limits would be considered as a *casus belli* was dismissed on the grounds that it is inconsistent with Article 2(4) of the U.N. Charter which outlaws the threat or use of force in relations between countries.

(ii) *Turkish Claims.* Turkey’s position regarding the territorial sea was based on a political argument that a possible extension of the Greek territorial waters would transform the Aegean into a “Greek lake.”⁸⁶ The basis for this opposition was that the twelve-mile limit had not acquired the character of a rule of customary international law since there was no accepted and general practice on this⁸⁷ and since the twelve-mile limit was the maximum and not the sole breadth to which states could extend their territorial sea. Therefore, states were not obliged to extend their territorial sea to twelve miles because it was totally legitimate for territorial waters to have a lesser breadth. Furthermore, Greece’s conduct on this subject was inconsistent. In UNCLOS I, it had submitted a draft for the approval of a three-mile territorial sea limit. During the work of the Sea-Bed Committee, it mentioned that it would not object to a maximum limit of 12 miles. In UNCLOS III, it proposed a twelve-mile territorial sea “not as a maximum limit but rather as a general and uniform rule.”⁸⁸

83. UNCLOS III, *Off.Rec.*, II, p.111.

84. Article 8(5) Doc.A/Conf.62/C.2.L22, UNCLOS III, *Off.Rec.*, III, p.201. See map 11.

85. UNCLOS III, *Off.Rec.*, II, p. 285; see also *Threat in the Aegean*, p.15.

86. Statement made by Turkish Prime Minister Suleyman Demirel, 5 June 1975; Valinakis, *Greek-Turkish Relations: Opinions Proposals, Views*, 1986, p.17; March, in *The Aegean Issues: Problems and Prospects*, 1989, p.223.

87. UNCLOS III, *Off.Rec.*, II, p.115.

88. *Idem.*

Turkey further argued that, in narrow seas such as the Aegean which can be characterized as enclosed or semi-enclosed, any possible extension of Greek territorial waters would have as an effect the increase of Greek jurisdiction in a manner that would deprive Turkey of its existing navigational rights and security and resource interests. If territorial waters were to be extended to twelve miles, "the whole Turkish sub-continent would practically be suffocated, as she would have to have permission from Greece every time one of her ships or aircraft had to leave Turkey."⁸⁹

More specifically, Turkey maintained that under the present regime there are only three places where shipping may enter or leave Turkish territorial waters from high seas. The present direct route of high seas which connects the Mediterranean with the entrance to the Dardanelles would cease to exist. All the ships leaving or entering Turkish ports would have to pass under Greek control.⁹⁰ Therefore, Turkey could not consider that the twelve-mile territorial sea should constitute the basic rule in international law, otherwise "new causes of friction and confrontation" would be created in the international community.⁹¹

The areas which were claimed by Turkey as being part of the Turkish continental shelf would be reduced in the case of a twelve-mile Greek territorial sea. In several studies on this matter, it has been stated that the areas covered by the exploration licenses of the Turkish Petroleum Company (TPAO), which cover 16.3% of the whole Aegean sea-bed, would be reduced to a mere 9.27%.⁹² Fishing would be exclusively reserved for Greece. For these reasons, Turkey wanted to introduce another criterion in UNCLOS III which would have the effect of limiting even further the right of a state to extend its territorial sea. This right could not be exercised in such a manner as "to cut off the territorial sea of another State or any part thereof from the high seas."⁹³

Turkey believed that the delimitation of the Aegean Sea was not a matter which should be solved unilaterally. In enclosed or semi-enclosed seas such as the Aegean, the bordering states could solve their problems "on the basis of bilateral or regional agreements."⁹⁴ Negotiations and agreement were

89. Umar, 1982, p.145.

90. See UNCLOS III, *Off.Rec.*, I, p.169.

91. UNCLOS III, *Off.Rec.*, I, p.169.

92. Wilson, in *Greece and Turkey: Adversity in Alliance*, 1984, p.94.

93. Article 2, Doc.A/Conf.62/C.2.L.7, UNCLOS III, *Off.Rec.*, III, p.188.

94. UNCLOS III, *Off.Rec.*, II, p.277.

the principal methods of delimitation and any unilateral decisions taken regardless of the legal position of other states were considered as contrary to principles of international law.

The reference to the median line in Article 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone did not give this method any prominence over other methods. But even in that case, islands constitute special circumstances which have to be taken into consideration. In order to strengthen this argument, Turkey used a *dictum* from the *North Sea* cases, despite the fact that the Court mentioned islands only in the context of the delimitation of the continental shelf between opposite states.⁹⁵ For all these reasons, any unilateral extension of the Greek territorial sea was to be considered as a *casus belli*.

However, it is interesting to see what Turkish practice was prior to the genesis of the Aegean Sea problem. In 1973, a protocol was signed between Turkey and the former Soviet Union concerning the establishment of a maritime boundary between their territorial seas in the Black Sea.⁹⁶ The two countries are adjacent to each other in the delimitation area. Whereas the general direction of the Soviet coastline is more or less straight, the Soviet coast between the Turkish-Soviet frontiers and the city of Batumi does not follow the general direction of the coastline, and for six miles it is slightly prolonged towards it. Despite that, the boundary line was equidistant from the coasts which were in the immediate vicinity of the two countries and not from the general direction of the coastline.⁹⁷ Thus, Turkey used the median line before the beginnings of the Aegean Sea dispute.

(b) Islands

A potential problem between the two countries which has only made an indirect appearance in their bilateral relations is the right of islands to claim maritime zones irrespective of size, population or other criteria. The word "indirect" is used above because, as has already been seen, this problem was actually included in the term "special circumstances," the presence or absence

95. UNCLOS III, *Off.Rec.*, II, p.105.

96. *The Law of the Sea: Maritime Boundary Agreements, 1970-1984*, pp.191-193. See map 6.

97. See also slight variations in the delimitation coordinates between *Limits in the Seas*, No.59, territorial sea boundary Soviet Union-Turkey, and the Protocol which was finally signed on 11 September 1983.

of which was so often invoked by the two countries in relation to the delimitation of the continental shelf or even the territorial sea. This problem, however, showed its real dimensions during the work of UNCLOS III.⁹⁸

The definition of an island as it was embodied in Article 10 of the 1958 Convention on the Territorial Sea and the Contiguous Zone was considered by certain countries as vague and simplistic.⁹⁹ Several delegates in UNCLOS III asked for a redefinition of the provisions concerning these insular formations.¹⁰⁰ In contrast to these attempts, a number of other states expressed satisfaction with the 1958 definition and asked for its retention.¹⁰¹ Greece and Turkey were among the most outspoken members of their respective groups.¹⁰²

Greece, because of the number and size of the Aegean Sea islands, supported the 1958 definition. In its draft articles, it used identical terms to define an island. As regards the insular maritime zones, the Greek concern was directed toward securing for islands the same treatment as for the mainlands.¹⁰³ It considered that an island has a right to claim a contiguous zone, economic zone, continental shelf and territorial sea, as well as the national airspace over it.¹⁰⁴ It also expressed the view that, because the economic life of an island is "sea-oriented," islands "had a more pronounced need for maritime spaces" than mainlands.¹⁰⁵

Turkey, on the other hand, supported the group advocating redefinition. As the Turkish delegate explained, "the enigmatic definitions of the Geneva Convention must be clarified."¹⁰⁶ The need for this clarification was more apparent in this Conference than in the previous one because UNCLOS III

98. See in general *Law of the Sea: Regime of Islands*, 1988, pp. 23-113.

99. See Hodgson, "no size criterion, locational requirement in relation to the mainland, or other particular geographical or special condition," in *Law of the Sea: Emerging Regime of the Oceans*, 1974, p.148; see also Goldie, *NYIL*, 1973, p.238.

100. Among these countries were Ireland, Colombia, Malta, Tunisia, Spain and Romania.

101. These were mainly insular states and included Fiji, New Zealand, Tonga and Western Samoa.

102. For Greek and Turkish proposals on islands in the Sea-Bed Committee, see Oda and Gormley, 1977, pp.104-105.

103. UNCLOS III, *Off.Rec.*, II, pp.285-286.

104. Doc.A/Conf.62/C.2/L.50, UNCLOS III, *Off.Rec.*, III, p.227.

105. UNCLOS III, *Off.Rec.*, II, p.285.

106. UNCLOS III, *Off.Rec.*, II, p.284.

would be dealing with very large marine areas. For this purpose, Turkey submitted a document containing its own draft articles on the regime of islands,¹⁰⁷ in which the first article was left blank, "intentionally" as the Turkish delegate said, to draw attention to the fact that the future convention must include an article giving definitions of insular concepts. Despite the fact that concern was expressed regarding the formulation of standard definitions for different categories of islands, Turkey did not make any such proposal.¹⁰⁸

It proposed, however, an article which, if applied, would have deprived many islands of any maritime zones including the territorial sea. According to Article 3(3), "islands without economic life and situated outside the territorial sea of a State shall have no marine space of their own." The meaning of the words "without economic life" is vague as it permits a number of interpretations.¹⁰⁹ An attempt at definition was made by the Turkish delegate who explained that he meant islands "without any form of economic or social life."¹¹⁰

It is unknown if Turkey was so optimistic as to believe that this proposal could be accepted by the other delegations of the Conference. A possible target of the Turkish proposal could have been two sizable Greek islands, namely, Agios Eustratios and Psara, which lie close to the Turkish coasts in the northern Aegean. As has been shown after the Imia/Kardak crisis in 1996, many islets and rocks are scattered in the Aegean. As a consequence of population movements from the Greek countryside to the cities in the 1960's and early 1970's, the population of these islands was reduced considerably with a resulting ageing of the population and a situation in which commercial life was practically non-existent.¹¹¹ A special regime was also proposed for rocks which, together with low-tide elevations, could not have any maritime spaces of their own. No definition of what constituted a rock was given, which led a commentator to characterize these articles as having an "inherent vagueness."¹¹²

107. Doc.A/Conf.62/C.2/L.55, UNCLOS III, *Off.Rec.*, III, p.230.

108. To the contrary, see Romanian proposal Doc.A/Conf.62/C.2/L.53, UNCLOS III, *Off.Rec.*, III, p.228.

109. See similar problems with the meaning of Article 121(3) of the LOSC in Brown, *MP*, 1978, pp.205-208.

110. UNCLOS III, *Off.Rec.*, II, p.284.

111. On the emigration from islands and the active and dependent population, see Wagstaff, in *Greece in the 1980's*, 1983, pp.13, 16-19, fig.2.2.

112. Symmons, 1979, p.99.

The Turkish provisions concerning the mathematical criteria by which the maritime zones of some categories of islands would be determined had much clearer implications. According to Article 3(2)

“An island situated in the economic zone or on the continental shelf of other States shall have no economic zone or continental shelf of its own if it does not contain at least one tenth of the land area and population of the State to which it belongs.”

As it was explained, “population and area ratios” must be taken into account in allocating ocean space.¹¹³ Of course, if these criteria were to be applied in the Aegean, almost no islands would be entitled to an EEZ or a continental shelf. Despite the fact that “a quarter of the total land area [of Greece] was islands, accounting for about 15 per cent of the total population,” none of them alone would have the size and the population needed.¹¹⁴ However, the addition “of individually insignificant insular land areas and population could make a good deal of difference in such computation.”¹¹⁵

(c) The Aegean Airspace

The continental shelf and the territorial sea were not the only problems that Turkey has raised in the Aegean Sea. The contest between the two countries which started in 1973 initially involved only one issue, that of delimitation of the continental shelf. As a result of the tension arising from the Cyprus invasion in July 1974, the contest was extended to include the whole regime of the Aegean. The question of national airspace was added to the territorial sea problem. Although the continental shelf and the territorial sea issues are distinct problems, the national airspace issue was relevant to a certain extent to both of them. On the one side, it was used to indirectly strengthen the Turkish position for a median line in the middle of the Aegean Sea between the two mainlands, ignoring the islands. Simultaneously, Turkey's denial of a ten-mile zone around the Greek islands, to be considered as part of the territorial sea, was in effect questioning Greece's right to extend its territorial sea.

(i) *The FIR*. On 6 August 1974, Turkey issued the Notice to Airmen 714 (NOTAM, a notice to the ICAO for transmission to all air traffic users) in

113. In a proposal to the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction, Turkey has proposed the criterion of “contiguity to their principal territory,” in *Law of the Sea: Regime of Islands*, 1988, p.19.

114. UNCLOS III, *Off.Rec.*, II, p.285.

115. Symmons, 1979., p.50.

which it tried to change the demarcation line which divides the Athens and Istanbul Flight Information Regions (FIRs)¹¹⁶ along the outer edge of the Turkish territorial sea. The 1952 ICAO arrangement¹¹⁷ meant that all aircraft flying from Turkey to Greece were obliged to report their positions to the Athens FIR a minute or so after leaving the Turkish coast. Aircraft flying from Greece to Turkey were similarly required to report to the control center in Istanbul after having crossed all the Greek islands in the Aegean. To have placed the FIR line further to the west would have obliged Greek aircraft to pass through a Turkish control zone on flights to and from the eastern Aegean Greek islands.¹¹⁸

NOTAM 714 required all aircraft to report their positions to the Istanbul FIR on reaching the median line of the Aegean.¹¹⁹ This point was justified, according to the Turkish government, in order to enable Turkish military radar to distinguish a military attack from innocent flights coming from the west. Greece responded quickly on 7 August with NOTAM 1918 denying the validity of the Turkish action.¹²⁰ It also alleged that the Turkish "report line" had been proposed for political reasons since it coincided with the western edge of Turkish claims to the continental shelf. Greek NOTAM 1157 on 13 September 1974 declared Aegean airspace a "danger zone" and thus all international airlines suspended direct flights between the two countries.¹²¹

(ii) *The National Airspace.* The summer of 1974 was also the anniversary of the Turkish complaint concerning the ten-mile Greek national airspace. On 1 September, the Turkish government asked Greece to issue a NOTAM reducing the Greek national airspace to six miles in order to correspond with the territorial sea.¹²² This request was made in order to allow Turkey to conduct military exercises in accordance with the rules of the ICAO for "civil-military co-ordination."¹²³ Greece rejected the Turkish request and con-

116. See *supra*, p.18. See map 2.

117. See *supra*, p.17.

118. See also *supra*, p.23.

119. Sazanides, 1987, p.170.

120. *Ibid.*, p.171.

121. *Ibid.*, pp.180-181.

122. Con.ICA0, Annex 15, Aeronautical Information Services. See Sazanides, 1987, p.40.; Yokaris, 1991, pp.74-75.

123. Con.ICA0, Annex 11, 2.14, 2.15.

tinued issuing NOTAMs which stated that "no aircraft is to travel within ten [10] nautical miles of Hellenic territory."¹²⁴

(iii) *The Greek Paradox*. This was the first time that such a problem was raised by Turkey. Its contesting of the ten-mile Greek national airspace was and still is based mainly on the Chicago convention which provides the following:

Article 1.

Sovereignty: The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

Article 2.

Territory: For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty protection or mandate of such State.

Turkey held that the contested six- to ten-mile zone of Greek national airspace is contrary to public international law which takes for granted the coincidence of the territorial sea and the territorial waters. Since the Chicago convention recognized national airspace only above the territory of each state, and the territory is defined as comprising the land areas and the territorial waters, Greek national airspace is consequently only six miles because this is the breadth of the Greek territorial waters.¹²⁵

Turkey also claimed that the unilateral extension of Greek national airspace to ten miles in 1931 was "almost a secret" and it became known to the Turkish government only in 1974.¹²⁶ Moreover, it asserted that not only Turkey but the "whole international community" or "other countries" did not recognize the ten-mile zone.¹²⁷ Although there were recently some indications that Turkey had changed its policy and accepted that the extension was more

124. 836/74 NOTAM, point (B), in Sazanides, 1987, p.169.

125. "Views on the Questions between Greece and Turkey," in *Dis Politika*, 1985, p.15, which represents the official Turkish views. See also statement of the representative of the Turkish Ministry of Foreign Affairs, Mr. Yalim Eralp, on 2 February 1985, *Eleftherotypia*, 3 February 1985.

126. Telegram of the Turkish Ministry of Foreign Affairs to Athens, 5 May 1975; personal information by Rozakis, in Rozakis, 1988, fn.278, p.467; also Valinakis, *The Greek-Turkish Relations 1923-1987*, 1986 p.18; see also Chapter 1, national airspace.

127. "Views on the Questions," in *Dis Politika*, 1985, p.15.

or less known to the Turkish authorities before 1974, this new approach has not been reconfirmed.¹²⁸ Finally, in order to show the inconsistencies underlying the Greek position with respect to the dualism of the zones, Turkey gave an example of a vessel being seven miles away from the Greek coasts. While that part of the vessel under the water is on the high seas, the part above the water violates Greek national airspace.¹²⁹

The response of the Greek government to these arguments during the first period after 1974 pointed to the consent and the recognition by the international community of the special status of Greek national airspace since 1931.¹³⁰ All the users of the Aegean airspace before the Second World War and of the FIR of Athens after the establishment of the ICAO respected this zone and did not "approach Hellenic territory nearer than ten miles" as requested by the Greek authorities. Turkey's behavior did not constitute an exception. The reason why Turkey began to contest Greek national airspace in 1974 was that it wished to alter the totally legitimate status quo in the Aegean.¹³¹

As the Turkish claims were expressed very late,¹³² they could not change the situation which had been stabilized and accepted even by Turkey in the Aegean over a number of years. Two principles underlie the Greek position. According to the first, the principle of estoppel can be invoked to prevent Turkey from raising its claims regarding the ten-mile zone, the legality of which was accepted for many years.¹³³ The second approach is expressed by Professors Hailbronner¹³⁴ and Rozakis,¹³⁵ namely, that Greek behavior and international practice represented a constant and uniform usage which had been conducted in a manner that constituted *opinio juris*. As a result, a

128. View expressed to the author by officials of the Turkish Embassy in Athens, 19 November 1992; see also Halkiopoulos, in *Greek Problems in the Air, from a Diplomatic, Military, Technical and Legal Point of View*, 1989, pp.57-58.

129. Sazanides, 1987, p.110.

130. For example, "Greek Response to a Turkish Announcement on 27 March 1982," *Kathimerini* (Athens newspaper), 28 March 1982.

131. Rozakis, 1988, p. 364.

132. Papadimitriou., *RevPI*, 1978, p. 38.

133. Yokaris, 1991, p.77; Georgacopoulos, 1988, pp.55-56.

134. Hailbronner, *Th.Ac.*, 1981, p.339.

135. Rozakis, 1988, p.370.

customary rule of law of particular application in the Aegean Sea was brought into effect.¹³⁶

The following comments can be made in relation to these views. With the exception of a sole protest made by Great Britain in 1940,¹³⁷ a ten-mile national airspace status existed without any reservation or protest from the international community from 1931 up to 1974.¹³⁸ However, absence of protest "is very relevant as a test of the value of unilateral acts" but "it is not necessary to found a rule of law." This legal truth in connection with Turkish accusations that the Royal Decree of 1931 was "scrupulously not given any publicity and in violation of all international norms and concepts the Decree can now be seen in hindsight"¹³⁹ has to be examined in order to test the present status of Greek national airspace.

First, the Presidential Decree which established the ten-mile zone was published in the *Official Gazette of the Government* of Greece in 1931.¹⁴⁰ Also, at the Balkan Convention of Bucharest on 24 January 1936 between Greece, Turkey, Romania and Yugoslavia, the four Balkan states accepted the principle of state sovereignty over national airspace on the basis of the existing legal framework of domestic legislation.¹⁴¹ In 1937, Greece presented to the Commission Internationale de Navigation Aérienne (CINA), according to the rules of Annex F of the Paris Convention for the Regulation of Aerial Navigation, aeronautical charts of the Greek airspace as well as the air corridors within it, without any problems being raised by CINA or any of its members.¹⁴² After the Second World War and up to 1949, the Provisional Civil Aviation Organization and the ICAO used the charts which were submitted to CINA as the basis for the "Air Navigation Regions."¹⁴³ In 1955, new charts were submitted by Greece on which international boundaries¹⁴⁴ as well as the ten miles of the Greek national airspace were clearly indicated and

136. See also Yokaris, 1991, pp.76-77; in Sazanides, 1987, p.109.

137. Rozakis, *Ikonomia ke Kinonia*, 1979, p.67, fn.6.

138. Papadimitriou, 1978, No. 670, p.38.

139. *The Aegean Realities*, p.9.

140. *Presidential Decree of 6/18 September 1931 to Define the Extent of the Territorial Waters for the Purposes of Aviation and the Control Thereof*, *ErK A/325* of 1931.

141. Yokaris, 1991, p. 61.

142. Law 602/1937, *ErK*, A' 136; see Yokaris, 1991, p.61. See also Law 2597/1940, *ErK*, A' 335/1940.

143. Yokaris, 1991, p.62.

144. Con.ICA0, Annex 4. Aeronautical Charts, 2.10.1.

were accepted in the Fourth Regional Meeting of the European Civil Aviation Conference in 1958.¹⁴⁵

In all these fora and international organizations in which Turkey participated, no protest was made against the extent of Greek national airspace, either by the ICAO or by any other contracting state, although the Chicago Convention specifically refers to the procedure to be followed in the event of a breach of the Convention.¹⁴⁶ Any contracting state has the right to refer to the Council any infraction of the Convention as well as to require the investigation of any situation "which may appear to present avoidable obstacles to the development of international air navigation."¹⁴⁷ Turkey did not complain about the extent of the Greek national airspace and respected it as is shown in the NOTAMs issued for its military exercises.¹⁴⁸

A final proof that this status was known and accepted by the international community is the decision of the military committee of NATO, which arranged for the limits of national airspace to correspond with the limits of the territorial sea, for the purposes of the Alliance. This decision was taken especially to apply to Greece's needs since no other allied country had this "duality" of zones.¹⁴⁹

Turkey's response to the ten-mile Greek national airspace can be characterized as acquiescence.¹⁵⁰ By virtue of the rules governing good faith, prolonged inaction on behalf of third-party states with regard to contesting the claims of a state in effective occupation, although these states are in a position to do so, constitutes behavior which gradually comes to be viewed as acquiescence, with the effect that such states are prevented from contesting the occupant's title.¹⁵¹

As in the *Anglo-Norwegian Fisheries* case, Greece can justify its claims over the ten-mile national airspace on the grounds that it has exercised the

145. Report point 2.6.2., Doc. 7870 EUM/IV.

146. Points (j) and (k) of Article 54 of Con. ICAO.

147. Point (e) of Article 55 and point (n) of Article 54 of the Con. ICAO. See also Yokaris, 1991, p.64.

148. NOTAMs 611/74, 784/74 for Turkish exercises "Good Friendship '74," and NOTAMs 262/75 for exercises "Deniz Gurdu 1/75," in Georgacopoulos, 1988, p.55. See also NOTAM 836/74 in *The Status Quo in the Aegean*, p.15.

149. See *supra*, pp.23-24.

150. For the difference between estoppel and acquiescence, see Bowett, *BYBIL*, 1957; MacGibbon, *ICLQ*, 1958.

151. Schwarzenberger and Brown, 1976, p.98.

necessary jurisdiction over it "without opposition from other States, a kind of *possessio longi temporis*,"¹⁵² with the result that its jurisdiction over this airspace must now be recognized although it can constitute a derogation of the rules of international law. In this case, acquiescence is treated as one element in the acquisition of rights by prescription. Acquisitive prescription is a doctrine whereby "legal validity can be given to titles to property that are either originally invalid or whose original validity is impossible to prove."¹⁵³

As regards the creation of special customary rights, acquiescence is essential to the formation of these rights.¹⁵⁴ These rights, which are established *erga omnes*, are regarded as exceptions to the general rule of the applicable law and they derogate from rights held in common by the generality of states.¹⁵⁵ A good example of a claim to a customary right is the four-mile territorial sea in Scandinavia. It is very difficult to prevent the claim over the ten-mile Greek national airspace from becoming a special customary rule with particular application in the Aegean region, as Greece has already done so.

In conclusion, it can be said that, if Turkish conduct before the Second World War can be characterized as that of a state which "has slept upon its rights" and subsequently is not allowed to revive them,¹⁵⁶ then, after the war and especially after Turkey's admission to NATO and up to 1974, this conduct is that of a state which accepts Greek national airspace in all respects, including military exercises.

152. *Fisheries, ICJ Reports*. 1951, p.130.

153 Johnson, *BYBIL*, 1950, p.332.

154. Fitzmaurice, *BYBIL*, 1953, pp.68-69.

155. MacGibbon, *BYBIL*, 1957, p. 122.

156. Greig, 1976, p.35.

5. To the Brink of War

A. BILATERAL NEGOTIATIONS—DEVELOPMENTS IN UNCLOS III

In January 1975, Greece proposed to Turkey that the differences over the applicable law and the substance of the delimitation of the Aegean continental shelf be submitted to the International Court of Justice. By that period, Turkey had already raised all the questions concerning the maritime zones of the Aegean Sea not only in UNCLOS III but at a bilateral level as well. The extent of the Greek territorial sea, the delimitation of the continental shelf and the use of Aegean airspace are the issues which are more or less still outstanding between the two countries.¹ The problem of the continental shelf continued to have priority over the others, but there was no indication in the exchange of notes between the two countries that Turkey considered that it should be resolved through legal means, although it accepted in principle the recourse to the ICJ.²

Turkey's reply was considered by Greece as being supportive of its proposal and a new period of negotiations between the two countries began.³ The Turkish reply, however, offered more than one interpretation and it was used by the Turkish government in UNCLOS III to demonstrate that disputes in areas with special characteristics, "such as semi-enclosed and enclosed seas, should as a matter of principle be resolved by mutual agreement of the States in the area."⁴ Direct negotiations between the two countries were favored in order to best determine "the principles to be applied" for the delimitation.⁵ In the meantime, Turkey had started to consider the "political nature" of the

1. See e.g., *infra*, pp.259-262.

2. Turkish note verbale, 6 February 1975, *Aegean Sea Pleadings*, p.30.

3. Turkish note verbale, 6 February 1975, *Aegean Sea Pleadings*, pp.30-31. Also meetings of representatives of the two parties in Rome, 17-19 May 1975, and Brussels, end of May 1975.

4. UNCLOS III, *Off.Rec.*, IV, Doc.A/Conf.62/38, p.128; see also Greek letter A/Conf.62/40, p.130.

5. Turkish note verbale, 30 July 1975, *Aegean Sea Pleadings*, p.35.

matter as being of vital importance. The political phase of the Aegean dispute was *ante portas*. On the contrary, the Greek government insisted that there was only one question over the Aegean, that of the delimitation of its continental shelf, and that this question should be resolved by legal means.⁶

The Greek and Turkish foreign ministers, Dimitrios Bitsios and Ihsan Caglayangil, met in Rome on 19 May 1975 to discuss a *compromis* for joint submission of the delimitation of the continental shelf of the Aegean to the ICJ.⁷ On 31 May 1975, the prime ministers of the two countries met at a NATO summit in Brussels. In the joint communiqué, the two leaders agreed to delimit peacefully the Aegean continental shelf and submit the dispute to the ICJ.⁸ This was the last time that Turkey accepted unconditionally a legal solution to the problem of the delimitation of the Aegean continental shelf. It took twenty-one years for Turkey to again accept recourse to a third-party settlement for the delimitation of the Aegean continental shelf, although under very specific and strict conditions.⁹

At the Third Session of UNCLOS III in Geneva during the spring of 1975, no progress was made in relation to the delimitation of maritime zones.¹⁰ The draft proposals submitted by various countries formed the basis of the work of Committee II, but their discussion was limited in comparison with the Caracas session. Turkey only expressed the view that, where in narrow seas the limited space between two coastal states was used jointly between them, any extension of the breadth of the territorial sea "would be tantamount to an annexation of territory." Therefore, the proposed rule on the question of the breadth of the territorial sea was to be found "in accordance with the geographical situation of States."¹¹

During the summer of 1975, there was some tension when a Canadian hydrographic vessel, *Goel 1*, with Turkish experts aboard started exploration research outside the Gulf of Izmir very close to Greek territorial waters.

6. See Greek notes verbales, 27 January 1975, 10 February 1975, 2 October 1975, *Aegean Sea Pleadings*.

7. See Communiqué conjoint, Rome, 19 May 1975, *Aegean Sea Pleadings*, p.13, Annex III.

8. Joint Communiqué, *Aegean Sea Pleadings*, p.33.

9. See statement of Turkish Prime Minister Mesut Yilmaz on 24 March 1996 on Turkish-Greek relations, *infra*, pp.363-365.

10. See generally Stevenson and Oxman, *AJIL* 1975, p.763ff.

11. UNCLOS III, *Off.Rec.*, Vol. IV, p.78.

Greek fears increased when, a year after the Turkish invasion of Cyprus, Turkey established its Fourth Army divisional headquarters at Izmir. This division, which was called the "Army of the Aegean," had no NATO commitments and was equipped with many amphibious landing crafts. The purpose of the establishment of the "Army of the Aegean" was, according to the Turkish press, to defend the Anatolian coast from Greek raids from the Greek islands of the Aegean.¹² In the months to come, the tension between the two countries remained high. The very real danger of an armed conflict between Greece and Turkey was reflected in the increases in their defense expenditures which were the highest of all the member states of NATO.¹³

In UNCLOS III, the situation regarding the delimitation issues was not any better. It became apparent that many countries were engaged in some sort of bilateral delimitation problem and, therefore, it was very difficult for any progress to be made since each state was insisting on preestablished views in order to support its own interests. For these reasons, Committee II established a special Negotiating Group (NG7) in 1976 to study informally the various proposals and try to find a compromise on the delimitation of the territorial sea, the continental shelf and the EEZ.¹⁴

As far as the two countries were concerned, Greece submitted an amendment which made a distinction between lateral and opposite delimitations. The amendment was based on the distinction made by the ICJ in the *North Sea* cases between the equidistance line employed in delimitations between adjacent states and the median line employed between opposite states.

1. The delimitation of the (exclusive) economic zone between two or more States, whose coasts are opposite to each other, shall be effected by agreement, on the basis of the principle of the median line, with such variances as may be justified by special circumstances.

12. See Sezer, in *Greece and Turkey, Adversity in Alliance*, p.64; Veremis, 1982, p.62.

13. In 1976, defense expenditure was 26% of the Greek budget and 29% of the Turkish, Clogg, in *Greece in the 1980's*, 1983, p.137.

14. UNCLOS III, *Off.Rec.*, VI, pp. 136-138; see also Nordquist, 1985, pp.93-95; generally for the work of UNCLOS III in 1976 see Oxman, *AJIL*, 1977, p.247ff; Brown, *M.Pol.M.*, 1977.

2. The delimitation of the (exclusive) economic zone between two or more States, whose coasts are adjacent to each other, shall be effected by agreement in accordance with equitable principles, employing where appropriate the equidistance line and taking into account all relevant circumstances.¹⁵

The median line method was proposed to be the rule for delimitations of the economic zone between opposite states.¹⁶ Despite the fact that this rule was directed solely to the EEZ, it seems that it represented the Greek view towards the problem of delimitations generally. However, the pro-equidistance group, to which Greece belonged within NG7, did not adopt the same view on the distinction between opposite and adjacent states. They insisted that delimitation generally should be effected by agreement, "employing as a general principle the median or equidistance line, taking into account any special circumstances where this is justified."¹⁷ There was no reference to relevant circumstances.

Turkey, on the contrary, as a strong supporter of the pro-equity group, was behind an amendment which, while omitting any reference to the equidistance method, prescribed as a rule the concept of agreement in accordance with equitable principles.¹⁸ The same equitable principles were also present in a draft article that Turkey had submitted in relation to the territorial sea. In this draft article, Turkey insisted on the special regime of semi-enclosed seas which have "special geographic characteristics." In these areas, "the breadth of the territorial sea shall be determined by agreement between the coastal States of that area, in accordance with equitable principles."¹⁹

15. Amendment reprinted in Platzöder, Vol. IV, 1983, pp.317-318.

16. But Tanja thinks that the remarks of the ICJ on the median line were closely related to the natural prolongation criterion and, therefore, "it is highly questionable whether this argument is also valid in the case of an opposite State delimitation," 1990, p.103.

17. U.N. Doc. A/Conf.62/C.2/L.28.

18. See Nordquist, 1985, pp.78-79.

19. UNCLOS III, *Off.Rec.*, Vol.V, Doc. A/Conf.62/C.2/L.90, p.202.

B. THE SISMİK-I INCIDENT

In the meantime, negotiations at a bilateral level between high-ranking officials of the two countries were moving slowly, particularly on the Turkish side, due to pressure from hard-line opposition parties.²⁰ The Turkish position started to crystallize through the exchange of notes and showed that Turkey did not consider recourse to the ICJ as being of primary importance. On the contrary, it felt that the submission should await attempts at "meaningful negotiations" and then and only then should the issue be referred to the ICJ with the "explicit consent" of both states. Even in that case, the joint submission should involve only the "unresolved but well defined legal issues."²¹

During January, February and June 1976, experts of the two countries met in Bern, Switzerland. The position of the Greek government was that, although the primary purpose of these meetings was the drafting of the *compromis* for the submission of the dispute to the ICJ, the experts could try to narrow the substantive issues of the dispute in their discussions.²² All these meetings ended in failure. Greece insisted on the Geneva Convention on the Continental Shelf as a basis for the negotiations. In the January and February meetings, Turkey accepted the legal character of the dispute, but the Turkish position in relation to the Continental Shelf Convention changed. A Turkish statement of January 1976 claimed that the Convention could not be invoked by Greece against Turkey since Turkey was not a party to it.²³ Nevertheless, "the relevant rules of international law" were mentioned once more by Turkey as the guiding principles for a solution to the problem.²⁴

In June 1976, Turkey changed its views and insisted on considering other non-legal aspects. These were the maintenance of the "delicate balance of the Lausanne Peace Treaty of 1923" and the strategic, economic and political interests of both parties in the Aegean Sea.²⁵ As it was expressed: "the

20. Clogg, *Greece in the 1980's*, 1983, p.138.

21. Turkish *notes verbales*, 30 September 1975, 18 November 1975, *Aegean Sea Pleadings*, pp.35,40.

22. See Greek note verbale, 22 May 1976, *ibid.*, pp.46-47.

23. Statement, 31 January 1976, by Bilge, *Mediterranean Continental Shelf*, p.1555.

24. *Ibid.*, p.1553.

25. Clogg, in *Greece in the 1980's*, 1983, p.138.

25. Turkish *notes verbales*, 18 November 1975, 15 March 1976, *Aegean Sea Pleadings*, pp.42-44; see also Statement of the Greek Delegation at the Meeting of Experts, Bern 19/20 June 1976.

continental shelf is an extension of the land territory and therefore constitutes an element of the equilibrium between the two countries established by the Treaty of Lausanne.”²⁶ The geological continuity of the Aegean continental shelf was one of the main Turkish arguments. During all the meetings in January, February and June 1976, the Turkish side insisted emphatically on the preparation of charts of the sea-bed of the Aegean Sea. These charts would include “elements for determining delimitation” such as geology, geomorphology and depths of the Aegean Sea.²⁷

The flux existing in the field of maritime delimitations in international law and the diametrically opposable views of the pro-equidistance and pro-equity groups has operated as a bar to the conclusion of any, even minor, agreement. Both countries expected the outcome of UNCLOS III to favor their own interests more than the interests of the other. Thus, they did not have any reason to make any commitments or, even more, to agree on a delimitation.

However, even these crab-walking negotiations stopped abruptly because of a new aggravation in the Greek-Turkish conflict. To Greek ears, the Turkish minister of energy, Kilic, “let the cat out of the bag” on 26 February 1976 when he said that the Turkish seismic research vessel MTA *Sismik-I* would establish “our sovereign rights in the Aegean in a way leaving no room for doubt.”²⁸ The real meaning of these words was demonstrated in August 1976 when MTA *Sismik-I* was sent into the Aegean in order to conduct seismological exploration of the Turkish territorial sea as well as of disputed portions of continental shelf areas under the high seas, while tension in the Aegean was assuming crisis proportions.²⁹ While exceptional military measures were taken by the two countries, the Greek government was under strong pressure from a high level of public emotion as well as from one of the opposition leaders, Andreas Papandreou, who accused it of lacking the courage to sink the Turkish ship.³⁰

26. Bilge, *Mediterranean Continental Shelf*, pp.1573-1574.

27. *Ibid.*, p.1583.

28. See *The Economist*, 17 July 1976.

29. See *The Times* (London newspaper), 4 August 1976, p.5, 12 August 1976, p.5 and 18 August 1976, p.4, when *Sismik-I* mission was suspended.

30. See *The Times* (London newspaper), 9 August 1976, *Akropolis* and *To Vima* (Athens newspapers), 10 August 1976.

It is not known why Turkey decided to act so provocatively by sending a ship to conduct seismic testing over the disputed areas of continental shelf. It could be considered as scientific research and, as such, exercised as part of the freedom of the high seas.³¹ Alternatively, it could have been an attempt to prejudice the existence of any possible rights of Greece over continental shelf areas in the Aegean. Two statements of the Turkish government are indicative of its way of thinking:

*Sismik-I...will even be able to carry out its mission not only in the areas of the Aegean where rights are claimed...but also in all the areas of the Aegean outside the territorial waters of Greece.*³²

MTA *Sismik-I* is carrying out its research outside the territorial waters in the Aegean where the continental shelf is yet to be delimited.³³

Whereas in the first statement the legal basis seemed to be that scientific research was a freedom of the high seas, in the second statement Turkey implied that *Sismik-I* was sent because the area of continental shelf was in dispute. Turkey later stated that the seismic activity conducted by its vessel was purely scientific research and thus it did not require Greece's consent. Nevertheless, it avoided an explanation of the legal basis of this contention. On the contrary, when the Turkish minister of energy spoke for the first time about the possibility of sending *Sismik-I*, he stated, "We are protecting our territorial rights by conducting seismic exploration."³⁴ Therefore, the allegation made by Professor D.P. O'Connell does not seem untenable, namely, that Turkey considered itself free to conduct seismic testing over the continental shelf since the area was disputed.³⁵

This time, Greece chose to react more decisively against this unilateral act and pursued its claims into two new *fora*.³⁶ First, it requested an urgent meeting of the U.N. Security Council where it alleged that "repeated and fla-

31. See LOSC, Art.87.

32. Statement by the Turkish foreign minister to *Radio Ankara*, 24 July 1976, *Aegean Sea Pleadings*, p.52.

33. Turkish Reply, 8 August 1976, *Aegean Sea Pleadings*, p.56.

34. Statement made by the Turkish minister of energy, Kilic, 8 March 1976, *Pulse*. See more in Bitsios, 1983, p.92.

35. See O'Connell, *Aegean Sea Pleadings*, p.89.

36. See *The Times* (London newspaper), 10 August 1976, 11 August 1976, p.5, 13 August 1976, p.5 and 14 August 1976, leading article, p.13. See also mediation efforts made by NATO countries, 25 August 1976, p.4, and the Soviet Union's intervention in the dispute, 14 August 1976, p.4.

grant violations of the sovereign rights of Greece" to the Aegean continental shelf had created a situation threatening international peace and security.³⁷ On the same day, by a unilateral application, it instituted proceedings against Turkey in the International Court of Justice, seeking the declaration of interim protection measures and the delimitation of the continental shelf appertaining to Greece and Turkey in the Aegean Sea.³⁸

1. THE SECURITY COUNCIL

This simultaneous appeal to the most "political" of the political organs of the United Nations, the Security Council, and the world's principal judicial organ, the ICJ,³⁹ did not offer any real prospect of achieving a peaceful settlement of the dispute.

The Greek appeal to the Security Council was based on the grounds that "repeated violation" and more specifically "seismological exploration," on the Aegean continental shelf, where Greece considered that it had sovereign rights "had threatened the peace and security" in the region.⁴⁰ In an explanatory memorandum, specific reference was made to "Turkish naval and air manoeuvres preceding or accompanying the movements of the vessel *Sismik-I*" and the precautions that had been taken by the Greek government.⁴¹ Turkey's insistence on continuing the tests was also connected with existing tension in Greek-Turkish relations after the Turkish invasion of Cyprus, where "the U.N. was not in time to stop the tragedy... [and] can now prevent a new tragedy in the Aegean"⁴². Greece invoked Chapter VI of the U.N. Charter, which concerns the pacific settlement of disputes, and more specifically Article 35, which provides that any member state may bring any situation which might lead to international friction or give rise to a dispute endangering the maintenance of peace and security to the attention of the Security Council.

37. U.N. Doc. S/12167. The request was pursuant to U.N. Charter art.35, §1. See Gross, *AJIL*, 1977, p.31.

38. *Aegean Sea Continental Shelf*, Interim measures, Order, *ICJ Reports*, 1976.

39. Gross, *AJIL*, 1977, p. 31, 39; Kariotis, *MP*, 1990, p.7; Papacosta, *HRIL*, 1985-86, p.181.

40. U.N. Doc.S/12168, 10 August 1976 and U.N. Doc.S/PV.1949, 12 August 1976.

41. U.N. Doc.S/12168, 10 August 1976, p.5. The movements of *Sismik-I* are detailed in this document.

42. U.N. Doc.S/PV.1949, 12 August 1976, p.16. See also Bitsios, 1983, p.86.

Turkey responded by stating that in the absence of an agreed delimitation "the Greek claim of violation of the Greek sovereign rights is completely unfounded."⁴³ It also claimed that *Sismik-I* "was being harassed by vessels and aircraft belonging to the Greek navy and Air Force."⁴⁴ Since Greece possessed no delimited sovereign rights in the Aegean beyond its own territorial waters, Turkey hoped that the Security Council would invite Greece to enter into "meaningful negotiations" and to stop violating the treaties of Lausanne and Paris regarding the demilitarization of the Aegean islands.⁴⁵ The task of *Sismik-I* was characterized as purely scientific. The Turkish government wanted scientific data in order to be able to conduct negotiations with Greece for the delimitation of the continental shelf.

It is very important to examine the Turkish approach to the Geneva Convention on the Continental Shelf. First, Turkey expressed its apprehension since Greece has determined its rights according to the Geneva Convention.⁴⁶ The rules of the Geneva Convention were not considered as applicable in a future delimitation because the Aegean was a special case and, moreover, the legal principles concerning the delimitation of the continental shelf were in a state of flux because of the work of UNCLOS III.⁴⁷ Finally, the delimitation of the Aegean continental shelf was not regarded by Turkey as a purely legal question, but it was stressed that it involved vital political, economic and security issues. The abandonment of the Geneva Convention was certain. The Turkish implication that the continental shelf delimitation was a political question, subject only to negotiations between the two countries, was final.⁴⁸

To the issues was added the Turkish complaint of violation of the treaties of Lausanne of 1923 and Paris of 1947 in the context of the demilitarized status of the eastern Aegean and the Dodecanese islands.⁴⁹ This was the first time that this matter appeared officially between the two countries.

43. U.N. Doc./S/12172, 11 August 1976, Annex I and Annex II, p.1.

44. Ibid., Annex II, p. 2. See also the "List of Illustrative Nature of the Harassment and Intimidation Actions," U.N. Doc.S/12175, 13 August 1976.

45. U.N. Doc.S/PV.1950, p.21.

46. U.N. Security Council resolution (1950th meeting), 6/7 October 1976, U.N. Doc.S/P.V.1950.

47. Ibid.

48. See also the speech of the Turkish foreign minister in the U.N. General Assembly, 29 September 1976

49. *Supra*, fn.45, at. p.21; also p.16.

In response to the arguments invoked by both sides,⁵⁰ the Security Council adopted Resolution 395 on 24 August 1976. This resolution made no attempt to blame either party, nor was the substance of the dispute directly challenged. The Security Council called upon the two governments to exercise restraint in order "to reduce the present tensions in the area." It also called upon them to resume direct negotiations with the hope of achieving a mutually acceptable solution, the remaining legal differences of which might be settled by "appropriate judicial means, [and] in particular the International Court of Justice."⁵¹ With Resolution 395/1976, the members of the Security Council attempted for the most part to preserve the peace in a region where there was a possibility of armed conflict. They tried to avoid making a ruling in which one of the parties was wrong, in order to maintain impartiality and to enhance the acceptability of their resolution to the parties. They did not deal directly with the substance of the dispute.⁵²

Greece appeared satisfied, although it had many reasons not to be. The initial draft of the resolution was much more favorably inclined towards the Greek arguments. Nevertheless, the behind-the-scenes activities of the British representative, Sir Ivor Richards,⁵³ led to the submission of the *prima facie* impartial resolution. Also, the Security Council did not blame Turkey for any provocative acts in the Aegean and, in fact, treated the two parties on an equal footing. On the other hand, the Greek contention was not rejected and the tension in the Aegean was defused. This, according to Greek Minister of Foreign Affairs Dimitrios Bitsios, was the primary objective of the Greek appeal to the Security Council.⁵⁴

Turkey was not very satisfied, either. The Security Council had not dismissed the Greek appeal as "completely pointless." Of course, the recommendation of the Security Council was to give priority to direct negotiations, which was one of the basic Turkish arguments, and on this point Turkey was partly successful. Nevertheless, the fact that the two parties had to think about recourse to the International Court of Justice to settle any remaining legal differences was not very welcome.

50. For the arguments of the parties, see Lenze, *Th.Ac.*, 1991, pp.602-606.

51. U.N. Doc.S/PV.1953; Security Council Resolution 395, 25 August 1976, *ILM*, 1976, p.1235.

52. For an analysis of Resolution 395/1976, see Gross, *AJIL*, 1977, pp.34-39; Robol, *HJIL*, 1977, pp.655-656.

53. See Bitsios, 1983, pp.88-89.

54. *Ibid.*, p.91.

It should be noted that more problems resulted from the ambiguity of the wording of paragraph 4 in relation to Greece's unilateral application to the ICJ. Resolution 395/1976 was typical of the style that usually prevails in resolutions adopted by the Security Council. There was no indication on which article of the U.N. Charter it was based. Therefore, different approaches were adopted by some of the members of the Security Council.⁵⁵ Most of them referred to Article 33 which calls for a solution achieved *inter alia* through negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement.⁵⁶ France, however, mentioned Article 36(3) since this article "specifically singles out the specific role to be played by the International Court of Justice in dealing with legal disputes, which is clearly what the limitation of the continental shelf is"⁵⁷. Before the *Aegean Sea* case, the Security Council had exercised its powers under Article 36(3) only once before in the *Corfu Channel* case.⁵⁸ In paragraph 4 of the resolution, the Security Council invited

the Governments of Greece and Turkey in this respect to continue to take into account the contribution that appropriate judicial means, in particular the International Court of Justice, are qualified to make to the settlement of any remaining legal differences which they may identify in connection with their present dispute.

A reading together of paragraphs 3 and 4 does not shed light on the real intentions of the Security Council since the following interpretations can be given to Resolution 395/1976:

- In relation to the conducting of "direct negotiations," this could either mean that the Security Council invited the two parties to decide through negotiations what issues should be submitted to the Court, or that the Security

55. U.N. Security Council resolutions (1,953rd meeting) p. 43; U.N. Doc. S/ P.V. 1953, (1976), pp.24-25, 26, 51, 52.

56. Gross, *AJIL*, 1977, p.36.

57. U.N. Doc.S/ P.V.1953 (1976), p.21.

58. Resolution 19/1947, 27 February 1947. See also General Assembly Resolution 1497 (XV), 31 October 1960, "The Status of the German-Speaking Element in the Province of Bolzano; Implementation of the Paris Agreement of 5 September 1946," 15 GAOR, Supp. (No.16) 5, U.N. Doc.A/4684 (1960), where special reference was made to Article 36(3) by the representatives of Ireland, Liberia and Paraguay, 15 GAOR, Spec. Pol.C. at 47, 26, 19, (1960).

Council proposed to the parties to start negotiations in order to draft a *compromis* upon which the dispute could be interpreted to the Court.⁵⁹

- In relation to the resumption of "direct negotiations" and "in this respect...the contribution...of the ICJ," this could either mean that the Security Council invited the two parties to resolve through negotiations the issues to be submitted to the Court and for Greece to withdraw its application, or that the Security Council exhorted the two parties "to continue to take into account" the contribution of the ICJ and thus to continue the procedures already started unilaterally by Greece.⁶⁰

- In relation to the "remaining legal differences," this could either mean that the Security Council adopted the Greek position that, after the extensive diplomatic efforts made since 1974, any remaining legal differences should be submitted to the ICJ, or that the Security Council endorsed the Turkish view and ordered that any differences remaining after the conducting of negotiations envisaged in paragraph 3 of the resolution be submitted to the ICJ.⁶¹

Whatever the intention of the Security Council, it was very unsatisfactorily expressed. And in view of the specific state of relations and lack of confidence existing between the two states, it was almost inevitable that each one would interpret Resolution 395/1976 in a way more favorable to its own interests.

2. THE ICJ

(a) *Interim Measures, 1976*

As far as the ICJ was concerned, Greece instituted proceedings against Turkey. It first requested an adjudication of a dispute concerning "the delimitation of the continental shelf appertaining to Greece and Turkey and concerning the respective legal rights of those States to explore and exploit the continental shelf of the Aegean."⁶² Second, Greece also requested provisional measures of protection from the Court on any exploration activity or scientific research with respect to disputed areas of the continental shelf.

59. See Robol, *HJIL*, 1977, p.656, fn. 47.

60. See the different approaches taken by two scholars, Gross, *AJIL*, 1977, pp.38-39; Robol, *HJIL*, 1977, p.656. See also Wilson, 1984, p.98.

61. See Robol, *HJIL*, 1977, p.656.

62. See Greek Application, *Aegean Sea Pleadings*, pp.3-11.

The Court departed considerably, in comparison to several preceding judgments,⁶³ as to the meaning of the concept of irreparable prejudice. Instead of invoking the need to prevent the performance of acts "likely to prejudice...the respective rights which may result from the pending judgment,"⁶⁴ it preferred to use the criterion of irreparable prejudice in law, the so-called Huber criterion.⁶⁵ The request for interim measures was denied on the grounds that "the circumstances are not such as to require the exercise of its power under Article 41 of the Statute"⁶⁶ and, furthermore, the alleged breach "might be capable of reparation by appropriate means."⁶⁷

One of the main reasons for the rejection of the Greek request seems to be the simultaneous recourse by Greece to the Security Council for political relief and the ICJ for legal relief. It was the first time in the history of the ICJ that a simultaneous and parallel action was brought by an applicant state to the Security Council and the Court. Problems of the relationship between these two principal organs of the U.N. arose, since both were competent to deal in their own sphere with the case submitted to them⁶⁸. The Court did not consider the parallel action of these two organs to be incompatible.⁶⁹ The same opinion was maintained in the *Diplomatic Staff in Tehran* case⁷⁰ and the *Nicaragua* case.⁷¹ In the *Aerial Incident at Lockerbie* case,⁷² it was argued that recourse to the Security Council did not exclude simultaneous or subsequent recourse to the ICJ. However, in this case, the Court did not address

63. *South-Eastern Greenland case*, PCIJ Series A/B, No. 48; *Electricity Company case*, PCIJ Series A/B, No. 79; *Anglo-Iranian Oil Company case*, ICJ Reports, 1951; *Interhandel case*, ICJ Reports, 1959; *Fisheries Jurisdiction cases*, ICJ Reports, 1972.

64. *Electricity Company case*, PCIJ Series A/B, No. 79, p.199.

65. Named after the PCIJ president in the *Sino-Belgian Treaty case*, Ser. A, No. 8; See Sztucki, 1983, p.106.

66. *Aegean Sea*, 1976, p.14.

67. *Ibid.*, §33.

68. *Aegean Sea*, 1976, Sep.Opinion Elias, p.28; See U.N. Charter, art.7 and ICJ Statute, art.36.

69. On the possible situation of *lis pendens*, see Ciobanu, in *The Future of the ICJ*, 1976, pp.219-226.

70. *U.S. Diplomatic and Consular Staff in Tehran*, (U.S. v. Iran), ICJ Reports, 1980.

71. *Military and Paramilitary Activities in and against Nicaragua*, Jurisdiction and Admissibility, Judgment, ICJ Reports, 1984, p.392.

72. *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie*, ICJ Reports, 1992.

this question because a new Security Council resolution significantly affected the circumstances of the case.⁷³

In the *Aegean Sea* case, the ICJ specifically referred to Resolution 395/1976 of the Security Council as well as to the statements made by the ministers of foreign affairs of the two countries following the resolution.⁷⁴ The connection between the ICJ and the Security Council within the United Nations led the Court to rest on the resolution and offer no more help to resolve the dispute or indicate measures to prevent the aggravation of the dispute.⁷⁵ As Judge Lachs, who had a different view of the role of the Court as a judicial organ, pointed out:

there was in my view no statutory bar to its spelling out the legal consequences of the Security Council's resolution and the official statements of the representatives of the two States. The pronouncements of the Council did not dispense the Court, an independent judicial organ, from expressing its own view on the serious situation in the disputed area.⁷⁶

In any case, the Greek government could not expect something radically new from the ICJ after the Security Council resolution. It was in 1971, in the *Namibia* case, where the Court held that it "does not possess powers of judicial review or appeal in respect of decisions taken by the United Nations organs concerned"⁷⁷. Twelve years after the request for interim measures in the *Aegean Sea*, U.K. Counsel in the *Aerial Incident at Lockerbie* case expressed the following views with regard to the relationship between the two organs of the U.N.:

The jurisdictions of the Security Council and International Court of Justice are parallel and not mutually exclusive, but that does not mean that each possesses every competence of the other...[t]he Court should never, when exercising its jurisdiction to indicate interim measures under

73. See Beveridge, *ICLQ*, 1992, p.918.

74. Bitsios (Greece) stated that the resolution would "clear away the obstacles to a resumption of the dialogue and lead to the solution of the problem of the continental shelf by peaceful means"; see Rozakis [3], 1979, p.229; *Aegean Sea*, 1976, §40.

75. *Aegean Sea*, 1976, §41-42. But Rosenne believes that the Court should not exercise its power to prevent incidents because the U.N. has the Security Council and the General Assembly which are competent to prevent incidents, 1965, p.426.

76. *Aegean Sea*, 1976, Sep.Opinion Lachs, p.20.

77. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, *ICJ Reports*, 1971, §88.

Article 41 of its Statute, do so if the result would be to interfere with the Security Council in the exercise of its duties and its powers under Chapter VI or VII of the Charter or even run the risk to do so.⁷⁸

Thus, it is obvious that any decision of the Court in 1976 which did not take account of Resolution 395/1976 could be considered as interfering with the exercise by the Security Council of its functions and prerogatives under the United Nations Charter.

Another point in the judgment where it seems that the Security Council resolution played a significant part is the second part of the Greek request regarding the call on the parties to "refrain from taking further military measures or actions which may endanger their peaceful relations." On this matter, the Court did not express its opinion but rather endorsed the Turkish views⁷⁹. It preferred to separate the infringement of the alleged Greek rights over the continental shelf from the military measures which were taken by both sides, although the use of force aggravated the whole incident. As Judge Mossler said: "The Court should have considered that it was part of its overall responsibility to consider the situation as a whole," the military aspect and the exploration activity "quite apart from its assessment of the Security Council's resolution"⁸⁰.

(b) *Jurisdictional Arguments, 1978*

The Greek appeal over the delimitation of the continental shelf and the rights of each country to explore and exploit it was unilateral since it was lodged without Turkey's consent and consequently without any *compromis* for joint submission of the Aegean delimitation to the Court. Turkey, on the other hand, pursuant to its denial of the Court's jurisdiction, declined to choose a judge ad hoc.⁸¹ Before entering into the merits of the case, the ICJ had to examine its jurisdiction. Under Article 36, Paragraph 1 of its statute, the jurisdiction of the Court depends on the consent of the parties. Greece asserted the existence of Turkish consent on two grounds.

78. Verbatim Record CR 92/3 p.72. See also Beveridge, *ICLQ*, 1992, pp.916-920.

79. Observations of the Turkish government, *Aegean Sea Pleadings*, p.75.

80. *Aegean Sea*, 1976, Sep.Opinion Mosler, p.27. See also Sep.Opinion Elias, p.29.

81. On the model of France in the *Nuclear Tests* litigation, *ICJ Reports*, 1974, Turkey was not represented in the Court hearings, confining itself to a written memorandum, again on the French model. On the situation arising from the non-appearance of the defendant state, see Thirlway, 1985; Elkind, *ICLQ*, 1988, pp.674-681.

The first was the joint communiqué which had been issued after the meeting of the prime ministers of the two countries in Brussels in 1975. In this communiqué, the two leaders stated that the problem "as regards the continental shelf of the Aegean [should be solved] by the International Court at The Hague".⁸² Turkey, in the observations which it transmitted to the Court, stated that "a joint communiqué does not amount to an agreement under international law." The Court, in determining the nature of the communiqué, held that it was not the intention of the two prime ministers "to accept unconditionally the unilateral submission of the present dispute to the Court".⁸³

The second manifestation of Turkish consent was, according to the Greek government, the General Act on the Pacific Settlement of International Disputes of 1928 to which both Greece and Turkey had acceded. Article 17 of this act says that all disputes over which the parties are in conflict shall be submitted to the Permanent Court of International Justice whose function has been inherited by the International Court of Justice.⁸⁴ Turkey argued *inter alia* that the application of the act was precluded by a Greek reservation which had been made at the time of Greece's accession to the General Act establishing the rules of the International Court. According to this reservation, "disputes...within the domestic jurisdiction of States, and in particular disputes relating to the territorial status of Greece, including disputes relating to its rights of sovereignty over its ports and lines of communication," were excluded from the jurisdiction of the Court.⁸⁵ Greece argued that the phrase "territorial status" referred only to land territory and that sovereignty was quite different from the sovereign rights exercised in the sea-bed.

Despite Greek objections to the application of the doctrine of inter-temporal law,⁸⁶ the ICJ held in December 1978 that, since Turkey refused to be represented before the Court as a party to the proceedings, it lacked jurisdiction to entertain the case.⁸⁷ Turkish arguments on the incompatibility of ju-

82. See Communiqué conjoint, Brussels, 31 May 1975, *Aegean Sea Pleadings*, p.13, Annex III.

83. *Aegean Sea*, 1978, §107.

84. Article 37 of the Statute of the ICJ; *Aegean Sea*, 1978, §33; on jurisdiction based on voluntary declarations in advance by the states concerned, see Merrills, *BYBIL*, 1979, pp.87-116.

85. *Aegean Sea*, 1978, §48.

86. On the *Aegean Sea* case and inter-temporal law, see Elias, *AJIL*, 1980, pp.296-302.

87. *Aegean Sea*, 1978, §109.

dicial proceedings with the simultaneous conducting of negotiations were dismissed.⁸⁸ The ICJ held that negotiation and judicial settlement are enumerated in Article 33 of the U.N. Charter as a means for the peaceful settlement of disputes.⁸⁹ This finding had two direct consequences with respect to Turkey's position. The first was that the General Act on the Pacific Settlement of International Disputes of 1928 was denounced by Turkey in 1978.⁹⁰ The second was related to the Turkish aims in UNCLOS III. In all Turkish proposals during the Conference, reference was made to Article 33. After the 1978 decision, recourse to Article 33 was never to reappear in any Turkish proposal.

(c) *Two Interesting Coincidences*

During the period that adjudication of the *Aegean Sea Continental Shelf* case was pending in the ICJ, the two countries managed to conclude two agreements with two of their neighboring states on the delimitation of the continental shelf. The first agreement was signed in 1977 between Greece and Italy and delimited the respective continental shelves in the Ionian Sea between the two states.⁹¹ Both countries shared the same views in relation to maritime delimitations as they belonged to the same pro-equidistance group.⁹²

As stated in the preamble of the agreement, the two countries decided to establish the dividing line between the zones of the continental shelf belonging to each of them "on the basis of the principle of the median line."⁹³ The median line took into consideration any possible future delimitations with the states in the area by simply indicating the general course of the final segments of the bilateral boundary subject to agreement on the tripoint of intersection with the zones of the continental shelf belonging to neighboring countries.⁹⁴

88. See *Aegean Sea Pleadings*, Turkish Note to Greece, 29 July 1978, p.523; Letter of the Turkish Ambassador to the Netherlands, 24 April 1978, p.588; O'Connell, pp.330-331.

89. *ICJ Reports*, 1978, §29-30, p.12.

90. Sohn, in *Encyclopedia of Public International Law*, 1981, p.155.

91. *Limits in the Seas*, 96; Bastianieli, *MP*, 1983, p.4.

92. For members of pro-equidistance group, see Nordquist, 1985, p.78.

93. See Rousseau, Ch., *Chronique des faits internationaux*, *RGDIP*, 1978, pp.293-294.

94. See, e.g., from the Memorial of the Federal Republic of Germany, *North Sea cases*, *Pleadings*, Vol. I, p.47, fig.12, delimitation between Greece, Italy and Albania.

Also, the median line was used by "taking into consideration any mutually approved minor adjustments."⁹⁵ These adjustments appear to have been negotiated at four points of the boundary line and were calculated to be between 1.8 and 6.1 miles of the apparent median line.⁹⁶ All the adjustments were at the expense of both countries and were minor since they covered an area of 700 sq. km. in a total area of 185,000 sq. km.⁹⁷ According to Greek officials,⁹⁸ these adjustments were necessary because of the divergence of views between the two parties as to the correct position of the median line because of the use of different methods of calculation as well as maps of different scale.⁹⁹

In the agreement, the problem of the exploitation of any possible shared resources extending over both sides of the boundary was addressed.¹⁰⁰ Special provisions were laid down for the settlement of any possible dispute. It was agreed that, if the dispute was not resolved in a period of four months, the dispute was to be submitted to the International Court of Justice or any other international authority chosen by common agreement, at the request of one of the parties.

It is clear that Greece wanted to use this delimitation as a model for any similar delimitation with Turkey. Thus, it managed to introduce into the agreement two basic concepts, the application of the method (or principle, as it was called in the agreement) of the median line and the submission of any disputes to the ICJ. Moreover, the Greek islands of the Ionian Sea were used as basepoints for the drawing of the median line and thus they were given almost a full continental shelf.¹⁰¹ The word "almost" is used because the only problem that Greece did not face was that of the baselines. Whereas Italy was

95. Agreement between the Italian Republic and the Hellenic Republic on the Delimitation of Zones of the Continental Shelf Belonging to Each of the Two States, *Limits in the Seas*, No. 96, art.1.

96. See analysis in the *Limits in the Seas*, No. 96, p.4.

97. Katsoufros, *Armenopoulos*, 1980, p.143; but see Prescott, J.R.V., "the central point appears to lie 3 miles on the Italian side of the median line, while the southern terminus lies 2.5 miles on the Greek side of the median line," in 1985, p.302.

98. Zaimis, *Minutes of the Greek Parliament*, 18-22 May 1978, p.3284.

99. See similar problems in the *Anglo-French* arbitration, Decision of 14 March 1978, pp.142-143; also, Hodgson and Cooper, *ODIL*, 1976, p.367,379,381,387.

100. Agreement, art.2. See also similar Italian approach in *Limits in the Seas*, No.9, Italy-Yugoslavia, No.89, Italy-Tunisia, No.90, Italy-Spain.

101. See Katsoufros, *Armenopoulos*, 1980, pp.144-149. See map 5.

using a system of straight baselines,¹⁰² Greece insisted on limits drawn with the normal baseline method. A consequence in the north, near the islands Othonoi and Makraki, and in the south, near the island Stamphani in the Strophades group, was that the median line was closer to the Greek islands than it would have been if both countries were using the same system of baselines.¹⁰³ In any case, the agreement is considered to be an example of a treaty fixing a median line.¹⁰⁴

The agreement was ratified by the Greek parliament in 1978, some months before the hearing of the Judgment in the *Aegean Continental shelf* case.¹⁰⁵ This occurred, despite the fact that the boundary line was drawn after "taking into account mutually agreed *minor adjustments*" which undoubtedly constituted a change in the limits of the state according to Article 27.¹⁰⁶ There can be little doubt that the ratification was in accordance with the Greek argument advanced before the ICJ and its decision in the *Aegean Sea* case that continental shelf rights do not constitute part of the Greek territorial rights.¹⁰⁷

Turkey also managed to make an arrangement with a neighbouring state for the delimitation of their continental shelves. On 23 June 1978, a protocol was signed between Turkey and the former Union of Soviet Socialist Republics on the delimitation of the continental shelf between the two countries in the Black Sea.¹⁰⁸ The two countries did not adopt the same approach towards equidistance. While Turkey was one of the main forces behind the pro-equity group, the Soviet Union was a party to the 1958 Convention on the Continental Shelf and in previous continental shelf delimitations had always applied a residual equidistance line.¹⁰⁹ However, the preamble of the agreement cites that the two countries agreed to delimit the continental shelf on the basis

102. Law-decree, 816/1977, *Gazzetta Ufficiale*, 305/9 November 1977. See also comments on the system of the Italian straight baselines in Reisman, and Westerman, 1992, pp.131-133; Churchill and Lowe, *The Law of the Sea*, p.32.

103. See Danish Reply, in the *Jan Mayen* case, §262; but see Alexander, *VJIL*, 1983, p.526.

104. Jagota, 1985, p.115.

105. Law 768/1978, *ΕτΚ*, Α'101, 21-6-1978.

106. Agreement, art.1, emphasis added.

107. See *Aegean Sea*, 1978, §76.

108. *Limits in the Seas*, No.109, Continental shelf boundary Turkey-USSR. See also *Limits in the Seas*, No.59, Territorial Sea Boundary: Soviet Union-Turkey, *supra*, p.98. See map?

109. Attard, 1987, pp.236, 252-253. See map 7, also map 6.

of the principle of equity. The "relevant principles and norms of international law" were taken into consideration for this delimitation.

Nevertheless, and despite the fact that the principle of equity can be implemented by methods other than equidistance, the boundary line between the two countries was constituted by a simplified equidistant line.¹¹⁰ It was an extension of the territorial sea boundary which was determined in 1973¹¹¹ and it was clearly based on the median line.¹¹² It is important to note that, unlike the Greek-Italian agreement, the Turkish-Soviet Union agreement does not refer to any mechanism for dispute settlement, nor does it face the problem of transboundary hydrocarbon deposits.¹¹³

Both agreements determined opposing continental shelf boundaries and expressed the principles on which they were based in a pompous manner. For the Ionian Sea boundary it was the median line; for the Black Sea boundary it was equity. The Turkish-Soviet agreement, however, adopted the equity principle as it was proposed by Turkey in UNCLOS III only in the preamble and therefore cannot be considered "as indicating *a priori* support for a rule based on equity."¹¹⁴ Moreover, it was the only agreement in the period between 1974-88 that implicitly contained a reference "to the existence of an alleged rule based on equity."¹¹⁵

In any case, if the agreements were concluded to impress the ICJ in its decision, as they seem to have been, they had very little, if any, influence on the judgment. Moreover, it is not without significance that the ICJ noted in a later case that "there can be no legal obligation for a party to a dispute to transpose, for the settlement of that dispute, a particular solution previously adopted in a different context."¹¹⁶

110. See analysis in the *Limits in the Seas*, No.109, p.4.

111. See *supra*, p.109-110.

112. Jagota, 1985, pp.119-120.

113. The agreement was ratified by Turkey on 3 May 1982, *OffTuGaz*, No.17226, 20 January 1981.

114. Tanja, 1990, p.122.

115. *Idem*.

116. *Jan Mayen* case, §85.

6. Developments in Bilateral Relations and in the Field of Delimitation, 1977 to 1981

INTRODUCTION

In 1977, the year in which the participants of UNCLOS III in New York were faced with the fact that negotiations over the issue of delimitation were stalemated because of the gap in the views of the pro-equidistance and the pro-equity groups,¹ Greece and Turkey reached an agreement for negotiations despite the fact that the *Aegean Sea* case was still outstanding before the ICJ. That same year, an Arbitration Court delivered its award which delimited the continental shelf between the United Kingdom and France. It was the first continental shelf case submitted to third-party settlement, apart from the *Aegean Sea Continental Shelf* case, which specifically involved the problem of the insular continental shelves.² The geographical area of delimitation, which resembles the Aegean Sea in many ways, as well as the developments in continental shelf law, make this judgment essential in the study of the delimitation of the maritime zones in the Aegean.

In the years that followed, bilateral negotiations continued with the same aims for each country but with an important difference in the terminology used. This was the result of the *Anglo-French* arbitration as well as the work in UNCLOS III which continued with several sessions in New York.

1. BERN AGREEMENT

In the aftermath of the judgment of September 1976 concerning the application for interim measures, representatives of the two governments met in Switzerland on 11 November 1976, where they signed a ten-point agreement known as the "Bern Agreement."³ This established a code of behavior for future talks. In that agreement, they expressed their intention to enter into nego-

1. See generally Oxman, *AJIL*, 1978, pp.57-83.

2. Bowett, *BYBIL*, 1978, p.1.

3. The official name of the agreement is "Bern Agreement on the Continental Shelf."

tiations "in good faith, with a view to reaching an agreement based on their mutual consent with regard to the delimitation of the continental shelf between themselves."

(a) *The Text*

The Bern Agreement was a treaty under Article 2 of the Vienna Convention on the Law of Treaties. The term "agreement," which was used by the two countries to describe the document adopted, was simply one of the many differently named instruments used by governments to describe international agreements that are in writing and are concluded between states.⁴ As the ICJ said in the *Temple of Preah Vihear* case (Preliminary Objections), "where...as is generally the case in international law which places the principal emphasis on the intention of the parties, the law prescribes no particular form, parties are free to choose what form they please provided their intention clearly results from it."⁵ The intention of the two states to be bound by the Bern Agreement is provided in each of the ten paragraphs of the document where it is stated that both parties "agree" or "undertake" to fulfill the obligations imposed.⁶ More specifically, its most important points are the following:

4. Both parties undertake the obligation not to use the details of this agreement and the proposals that each will make during the negotiations in any circumstance outside the context of the negotiations.
6. Both parties undertake to abstain from any initiative or act relating to the continental shelf of the Aegean Sea which might prejudice the negotiations.
7. Both parties undertake, as far as their bilateral relations are concerned, to abstain from any initiative or act which would tend to discredit the other party.
8. Both parties have agreed to study state practice and international rules on this subject with a view to educing certain principles and practical criteria which could be of use in the delimitation of the Continental Shelf between the two countries.⁷

4. McNair, 1961, pp.22-30; Elias, 1974, pp.13-15.

5. *Temple of Preah Vihear*, ICJ Reports, 1961, p.31.

6. Rozakis, 1988, p.453, fn.81.

7. For the whole text of the Bern Agreement, see *ILM*, 1977, p.13.

The consent of the two countries to be bound by the Bern Agreement was also expressed by the signatures of their respective representatives, Ioannis Tzounis and Ali Suat Bilge.⁸ The two states were bound by it without its ratification since "in the present practice of States the treaties in which there is no clear evidence...of the parties' intentions as to the mode of entry into force almost without exception enter into force by signature."⁹ It is therefore the rules of the Vienna Convention as well as the jurisprudence of international tribunals which form the legal framework covering the Bern Agreement.

The agreement did not attempt to deal with the substance of the dispute. Its *raison d'être* was simply to form the framework for bilateral talks. With the signing of this document, Greece was officially accepting the resumption of direct negotiations over the differences between the two countries in relation to the continental shelf. Turkey, on the other hand, was indirectly accepting that the dispute had a legal character since in paragraphs 8 and 9 the two countries agreed to study state practice and the international rules on the delimitation of the continental shelf. State practice is, according to Article 38 of the ICJ Statute, one of the sources acknowledged as giving rise to rules which have the force of law.¹⁰ In case it could be argued that the reference to "state practice" was synonymous with usage and not with custom, and therefore could not be considered as proof of the obligatory or lawful character of the actions of the states, the Bern Agreement also referred to international rules.¹¹ Finally, it was also agreed to establish a mixed commission in order to educe these principles and criteria from international practice.¹²

The Bern Agreement was a bilateral treaty which laid down rules of conduct which were to apply during the negotiations between the two countries. It dealt with a specific geographical locality and, therefore, it applied only to that locality. That the parties' intention was that the treaty be of limited application was established and expressly indicated in paragraph 6

8. Article 12 of the Vienna Convention on the Law of Treaties. For the signatures, see *To Vima*, 21 November 1976. See also Council of Europe, *Expression of Consent of States to be Bound by a Treaty*, 1987, Greece: pp.39-44; Turkey: pp.95-97.

9. Blix, *BYBIL*, 1953, p.380. But see also McNair, 1961, p.133, and Fitzmaurice, *BYBIL*, 1934, p.129.

10. As for the proof of custom in international tribunals, see Jenks, 1964, pp.225-265.

11. See *Dipla*, 1992, p.13. See also Villiger, 1985, pp.25-29.

12. Point 9 of the Bern Agreement; Rozakis, 1988, p.300.

where the two countries undertook "to abstain from any initiative or act relating to the continental shelf of the Aegean Sea which might prejudice the negotiations."

(b) Some Problems of Interpretation

A serious point of disagreement between the two parties was paragraph 6 which obliged them to abstain "from any act or initiative relating to the continental shelf of the Aegean." What was the exact meaning of the words "the continental shelf of the Aegean"? Did it apply to the whole area of continental shelf which is part of the high seas, outside the territorial seas of the two countries, or did it concern solely the area where there existed overlapping claims between the two countries as had been expressed in the past?

Turkey considered that the whole Aegean continental shelf was suspended from any action. "According to Article 6...parties undertake to take every action and initiative concerning the continental shelf of the Aegean which could be the subject of negotiations."¹³ Nevertheless, the limits of the disputed area have never been settled. As Turkey stated in its observations in the ICJ in 1976, "Greece has not even been willing to agree on the definition of the Aegean Sea for the purposes of negotiations."¹⁴ Therefore, and under these circumstances, as long as the disputed area was not defined, Turkey considered that Article 6 applied to the whole Aegean continental shelf.¹⁵ The Greek side considered that it should refrain from any action only in the areas where the Turkish concessions were granted in 1973 and 1974 since all the other areas of the Aegean continental shelf have never been contested.¹⁶

"It is not allowable to interpret what has no need of interpretation."¹⁷ But the lack of clarity in the text of the Bern Agreement calls for resorting to the rules of interpretation of treaties. These can elucidate its meaning concerning its limited territorial application.¹⁸ A general rule of interpretation calling for a textual approach is laid down in Article 31 of the Vienna Con-

13. Bilge, S., 1989, p.10.

14. Observations of the Turkish government, *Aegean Sea Pleadings*, p.70.

15. See statement of the spokesman of the Turkish Ministry of Foreign Affairs, *Kathimerini* (Athens newspaper), 6 March 1987: "All exploitation activities beyond Greek territorial waters constitute a breach of the Bern Agreement."

16. Personal information from Professor Constantine Economides of the Greek Foreign Ministry dated 21 November 1992.

17. Vattel, (1774) 1916, §263.

18. See generally about the methods of interpretation Haraszti, 1973, pp.79-153.

vention: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." This rule is considered to be part of customary international law.¹⁹

A basic requirement is that the text has to be interpreted in good faith. Good faith "strongly implies the element of reasonableness."²⁰ It is reasonable to believe that the disputed geographical area is defined *grosso modo*. It is the area over which there exist overlapping claims of the two states. As the ICJ said in the *North Sea* cases, "any dispute about boundaries must involve that there is a disputed marginal or fringe area, to which both parties are laying claim."²¹ In the Aegean, this area is the continental shelf of the eastern Aegean where Greece has exercised its *ex hypothesi* rights since 1963 and Turkey contested them in the early 1970s. The limits of this area can easily be defined by use of the maps that were published by Turkey on 1 November 1973, 6 June 1974 and 18 July 1974.²²

Also, paragraph 6 of the Bern Agreement speaks about activities "which might prejudice the negotiations." It runs counter to good faith to imply that activities out of the area, which was contested between the two countries in 1973 and 1974, are able to prejudice any negotiations. These areas are completely irrelevant to the subject of the negotiations.

As the ICJ held, "there is no occasion to resort to preparatory work if the text of a convention is sufficiently clear in itself."²³ However, recourse to supplementary means of interpretation in order to confirm that meaning cannot be objected to.²⁴ Unfortunately, the *travaux préparatoires* of the Bern Agreement have not been published and they are not yet accessible for in-

19. It has been accepted unanimously by the ILC; see *YBILC*, 1966, Vol. II, Commentary (Treaties), art. 27, par. 9, p.220. See also *Competence of the General Assembly for the Admission of a State to the United Nations* case, *ICJ Reports*, 1950, p.8; *Certain Expenses of the United Nations* case, *ICJ Reports*, 1962, pp.158-159. See also Fitzmaurice, *BYBIL*, 1957, pp.212; McNair, 1961, pp.368-370; Oppenheim, 1992, p.1271.

20. Oppenheim, 1992, p.1272, fn. 7. See also *Peter Pazmany University* case, *PCIJ Series A/B*, No. 61, p.247.

21. *North Sea*, §20, p.23.

22. See Annex I in the *Aegean Sea Pleadings*, pp.13-20.

23. *The Conditions of Admission of a State to the United Nations* case, *ICJ Reports*, 1948, p.63.

24. Article 32 of the Vienna Convention on the Law of Treaties; McNair, 1961, pp.413-415.

spection. Therefore, mention should be made of the circumstances of the conclusion of the treaty and of the history of the negotiations.²⁵ The Bern Agreement was made after Resolution 395/1976 and was intended to solve the temporal problems between Greece and Turkey in relation to the continental shelf. These problems applied only to the areas where Turkish licenses were granted in 1973 and 1974 and not to the whole Aegean continental shelf.

The Permanent Court of International Justice (PCIJ) has said on one occasion that "if the wording of a treaty provision is not clear, in choosing between several admissible interpretations, the one which involves the minimum of obligations for the parties should be adopted."²⁶ This is an emanation of the principle *in dubio mitius* according to which, if the meaning of a term is ambiguous, the meaning to be preferred is the meaning "which is less onerous to the party assuming an obligation...or which involves less general restrictions upon the parties."²⁷ Thus, the Greek interpretation, according to which the obligations imposed are limited only to the areas which were subject to the granting of Turkish oil concessions, is preferable as imposing a minimum of obligations in comparison with a maximum of obligations claimed by Turkey and applying to the whole Aegean continental shelf.

Finally, as the PCIJ stated on another occasion, a treaty may be interpreted as not imposing a significantly greater burden on one party than it does on the other, unless such an intention is manifest.²⁸ If paragraph 6 had been interpreted as calling for a prohibition of activities in all the areas beyond the territorial seas of the two countries in the Aegean, this would have imposed a much greater burden on Greece than on Turkey. It would have obliged Greece to abstain, for example, even from the continental shelf which lies between the Peloponnese and the Cyclades islands, an area beyond any possible Turkish claims even under the most extreme circumstances. Turkey possesses only two islands in the northeastern Aegean. Therefore, it cannot extend its jurisdiction to significant areas of continental shelf.

25. Fleischhauer, in *Encyclopedia of Public International Law*, p.153.

26. Advisory Opinion upon the *Frontier between Turkey and Iraq*, 1925, *PCIJ Series B*, No. 12, p.25.

27. Oppenheim, 1992, p.1278.

28. *Diversion of the Waters of the River Meuse* case, *PCIJ Series A/B*, No. 70, p.70.

2. THE ANGLO-FRENCH ARBITRATION

Between the first judgment on delimitation and the *Anglo-French* case, some eight years elapsed. The award offered a very good opportunity for comments and reexamination of the rules and principles enunciated in the *North Sea* judgment as well as for an analysis of the development of the law of delimitation.²⁹ It is not without significance that the members of the Court were aware of the new trends of UNCLOS III as well as the fact that the Conference was experiencing great difficulties over the delimitation of maritime spaces. Unlike the situation in the *North Sea* cases, the Court was empowered not only to decide the applicable rules and principles in the dispute but to establish the actual boundary as well. Both France and Great Britain were parties to the Geneva Convention on the Continental Shelf.

The *Anglo-French* arbitration had a significant impact on the Greek-Turkish dispute over the Aegean. This arbitration not only offered a further judicial review of the rules of delimitation, but the geographical circumstances were to a certain extent similar to the situation in the Aegean Sea as well. The Channel islands consist of four islands which are situated off the French coast but are under British sovereignty. At the nearest point of the southeast side, they lie only 6.6 miles³⁰ from the French coast. They have a total land area of 195 sq. km. and a population of 130,000. In the Channel islands area, the mainlands of Great Britain and France are in a situation of oppositeness. Since the mainlands of Greece and Turkey are mostly in a situation of oppositeness as well, the Court's treatment of the Channel islands offers many analogies. However, the most important difference is that the Channel islands, unlike the Aegean islands, are isolated and embraced within a French gulf.

First, Great Britain argued that the opposite coasts for the delimitation were those of the Channel islands, an argument used by Greece in the Aegean, although the number, size, population and economic and political importance of the islands were by no means comparable between the two areas. Second, the judgment came in a period when, after the conclusion of the Bern Agreement, negotiations had started between the two countries. The findings of the Court in relation to the insular shelves were more relevant to

29. Brown [1], 33 *YBWA*, 1979, p.304. The Arbitration Court delivered a second judgment in 1978; for more about the 1978 Award (Interpretation), see Colson, *AJIL*, 1979, pp.112-120; Merrills, *CWILJ*, 1980, p.314; Rosenne, 1979, pp.100-113.

30. Award, §6,(3).

the Aegean Sea than the Court's previous findings with respect to the delimitation between three mainland states as was the case in the North Sea. For all these reasons, a close study of the *Anglo-French* arbitration is very important.

(a) Article 6 of the Continental Shelf Convention and Customary Law

In the microcosm of maritime delimitations, the views of the two parties in the *Anglo-French* arbitration concerning the applicable law were identical with those of Greece and Turkey in the Aegean dispute. Turkey invoked rules of customary international law in accordance with the 1969 judgment. France wanted to assure recourse to the principles of customary law as they were expressed by the ICJ in the *North Sea* cases. Greece was asked for a delimitation in accordance with the median line. Great Britain wanted a delimitation according to the principles of Article 6 of the Continental Shelf Convention.³¹

Despite the fact that both states had ratified the Geneva Convention on the Continental Shelf, the fact that France made a declaration which *inter alia* included a three-part reservation to Article 6 caused Britain to argue that the rules embodied in Article 6 of the 1958 Continental Shelf Convention were not applicable between the parties.³² France maintained as a counterargument that all the Geneva Conventions, including that of the Continental Shelf, "have been rendered obsolete by the recent evolution of customary law stimulated by the work of the Third United Nations Conference on the Law of the Sea."³³ Britain argued *inter alia* that the median line "produces a result which accords with equitable principles" and which cannot leave "to either State areas of seabed which are uniquely part of the natural prolongation of the other."³⁴

When examining the applicability of the Geneva Convention, the Court dismissed the French argument about the rapid evolution of customary law since

neither the records of the Third United Nations Conference on the Law of the Sea nor the practice of States outside the Conference provide any such conclusive indication that the Continental Shelf Convention of

31. See Colson, *AJIL*, 1978, pp.100-101.

32. *UNLSer. ST/LEG/SER.D/10*, p.520; Award, §43. On the reservations, see the Award §37,38,39,44; also Boyle, *ICLQ*, 1980, pp.498-508.

33. Award, §45.

34. *Ibid.*, §211 (b).

1958 is today considered by its parties to be already obsolete and no longer applicable as a treaty in force³⁵

However, this finding did not mean that the Court was not going to take into account the "recent developments in customary law."³⁶

Because of the effect of the French reservations,³⁷ the Court found that the parties were bound by the "rules and principles governing delimitation of the continental shelf in general international law" in the Channel islands region,³⁸ which was referred to explicitly in the French reservations, whereas in the Atlantic region the applicable law was Article 6. The finding of the Court was interesting because the application of two different rules, namely, the equidistance principle as embodied in Article 6 and customary rules as they were interpreted by the ICJ, would lead, according to the two groups in Committee II of UNCLOS III, to different results. It was for this reason that NG7 struggled to reach agreement on the rules of delimitation without success.

Nevertheless, the Court regarded as minimal the differences between the practical effects of the application of two different rules because "applying or not applying the provisions of the Convention, and in particular of Article 6, will not make much practical difference, if any, to the actual course of the boundary."³⁹ In what must be regarded as the most crucial part of its award in connection with the Aegean Sea, the Court expressed the view that "the course of boundary...will be the same whether the delimitation is made on the basis of Article 6 or of the rules of customary law."⁴⁰ This means that "*prima facie* the Court's award may be of relevance to a situation like the Aegean where the rules of customary international law apply."⁴¹

The Court asserted that Article 6 did not formulate the equidistance principle and special circumstances principle as either two separate rules or as

35. *Ibid.*, §47.

36. *Ibid.*, §48.

37. See Diss.Opinion Briggs who regarded the reservations as intending to prevent unilateral delimitations based upon equidistance by other states and thus irrelevant to a delimitation by a Court founded on the consent of both parties; Award, pp.120-127; also Boyle, 1980; Imbert, *AFDI*, 1978, pp.29-58.

38. Award §62.

39. *Ibid.*, §65. Tanja considers this view as "premature" because it showed that the Court had already decided on the course of the boundary, 1990, p.164.

40. Award, §73.

41. Bowett, 1979, p.277.

one rule (equidistance) and one exception (special circumstances), as was the United Kingdom's view. The Court assimilated in practical terms the two notions by holding that both are embraced in one single rule, "a combined equidistance-special circumstances rule."⁴²

This rule was then considered in relation to equitable principles. In the Court's view, the *travaux préparatoires* of Article 6 in the ILC and at the Geneva Conference of 1958 introduced special circumstances because their role in Article 6 "is to ensure an equitable delimitation."⁴³ Thus, the combined "equidistance-special circumstances rule...gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles."⁴⁴ According to the Court, that was the reason for the absence of any definition of special circumstances in Article 6.

The Court considered that the special circumstances proviso was incorporated in the concept of equitable principles, because even under Article 6 it is the geographical and other circumstances of any given case which indicate and justify the use of the equidistance method "as the means of achieving an equitable solution rather than the inherent quality of the method as a legal norm of delimitation."⁴⁵

The choice of the method or methods of delimitation in any given case, whether under the 1958 Convention or customary law, has therefore to be determined in the light of those [geographical and other relevant] circumstances and of the fundamental norm that the delimitation must be in accordance with equitable principles.⁴⁶

Thus, although the Court said initially that the results would be identical in the specific situation of the arbitration area, it later reached a more general conclusion according to which Article 6 would in substance be identical to the rule of customary law. This could mean that Article 6 denies any special

42. Award, §68; but *Dipla*, "this is against the history of the Article," 1984, p.183; see also Opinions of the Judges in the *North Sea* case where they regarded Article 6 as containing a rule and an exception, Diss.Opinions Morelli, p.206, Tanaka, pp.220, 239, Lachs, p.254, Sorensen; Sep.Opinions, Padilla Nervo, p.92, Ammoun, §52.

43. But see Zoller for differences with the *North Sea* cases as to the explicit formation of the Article 6, *AFDI*, 1977, p.368.

44. Award, §70.

45. *Ibid.*; see also Rigaldies, *JDI*, 1979, p.526.

46. Award, §97; see also Symmons, p.175.

place to equidistance because, according to the 1969 judgment under customary law, equidistance is just one method among the others,⁴⁷ or that the equitable principles were incorporated in Article 6, probably through the notion of special circumstances, or that the Court "saw customary law as providing for recourse to equidistance as a first step."⁴⁸ With the exception of the last interpretation, which is not generally accepted, if the Court was adopting the other two, it was implying that the arguments between the pro-equity and the pro-equidistance groups in UNCLOS III were of no importance.⁴⁹ The Court confirmed this view by saying that, after having examined the provisions of UNCLOS III, it found that "if they were applicable, they would [not] make any difference to the determination of the course of the boundary in the present case."⁵⁰

(b) Geology, Geomorphology and Natural Prolongation

The Court examined the notion of natural prolongation as it had been expressed in the 1969 judgment. The *North Sea* judgment concerning the natural prolongation extensively influenced Turkey in the years between 1974 and 1977.⁵¹ Thus, it was argued that the eastern Aegean islands were situated on Turkey's natural prolongation. Similar arguments were used by France in relation to the Channel islands.⁵² The sea-bed in the arbitration area, like the Aegean Sea,⁵³ was characterized by a geological continuity. All the islands in the region can be identified with the territory either on the French or on the British side. Geologically, there is a line of faults in the Channel area known as the Hurd Deep Fault. A less important line of faults known as the Hurd Deep Fault Zone exists in the Atlantic Region. These features are not similar to the Norwegian Trough, which was used as an example in the 1969 judgment, and it seems that they are quite common in many shelves, as they are in the Aegean sea-bed.⁵⁴

47. *North Sea* cases, §25,69,85.

48. Weil, 1989, fn.120, p.147.

49. Tanja, "With the diametrically opposed views at UNCLOS III...this was a rather bold statement," 1990, p.164; see also Colson, *AJIL*, 1978, p.102.

50. Award, §96.

51. See *Aegean Sea Pleadings*, p.169.

52. Award, §191-193.

53. Bowett, 1979, p.262.

54. *Ibid.*, p.263.

The Court in "a salutary development"⁵⁵ played down the significance of geomorphological or geological features. It found out that these deep faults could not be considered as interrupting "the essential unity of the continental shelf."⁵⁶ The reason was not that they were minor in comparison with the Norwegian Trough, but because, as the Court said, "should the equidistance line...not appear...to constitute the appropriate boundary...it will be because some geographical feature amounts to a 'special circumstance'" which justifies a residual equidistance line or calls for the use of some other method.⁵⁷ Did the Court want to imply that there is no such thing as a "natural boundary"? The wording of the Award is not very clear and this remained an open question.⁵⁸

As far as the "fundamental norm" of natural prolongation and the non-encroachment as formulated in the *North Sea* cases are concerned, the Court corrected to a certain extent the particular emphasis which was put on these factors. It questioned these principles as they were formed in 1969 because the non-encroachment of the natural prolongation "states the problem rather than solves it." As the Court very rightly observed, the problem of delimitation exists because the territories of two or more states "abut on a single continuous area of continental shelf" which "may be said geographically to constitute a natural prolongation of the territory of each of the States concerned."⁵⁹ Indirectly, the Arbitration Court implied that the ICJ "was wrong in 1969 in introducing these 'legal' principles into the arena of delimitation law."⁶⁰

The Court dismissed the French argument concerning an enclave around the Channel islands because they were the natural prolongation of France. Therefore, "there would be found to be little merit" in the similar Turkish argument concerning the eastern Aegean islands.⁶¹

55. Bowett, *BYBIL*, 1978, p.16.

56. Award, §107. For the two ways that a boundary based on a trench or trough may be supported, see McRae, *CYBIL*, 1977, p.187.

57. Award, §108.

58. But see Evans, 1989, p.112; see also Bowett, 1978, *BYBIL*, p.17.

59. Award, §79; see also Blecher, who states that in most continental shelf cases "all of the shelf can be regarded as the natural prolongation of all the parties," *AJIL*, 1979, p.63.

60. Tanja, 1990, p.167; see also Evans, 1989, p.118.

61. Award, §191-195; Bowett, 1979, p.263.

(c) Proportionality

Another observation of the Court which related to the 1969 judgment was the role of proportionality "between the extent of the continental shelf appertaining to the States concerned and the lengths of their respective coast-lines"⁶². The French argument that proportionality should be considered as a principle of customary law was dismissed by the Court. The function of proportionality was considered "as a criterion or factor relevant in evaluating the equities of certain geographical situations,"⁶³ rather than "a criterion to assess the distorting effects of particular geographical features and the extent of certain geographical situations."⁶⁴ Thus, proportionality was to be used by the Court as a criterion to assess the equitable result of a delimitation *a posteriori* because of the presence of "uncertain geographical situations."⁶⁵

The geographical characteristics of the delimitation area, however, made the application of the proportionality test of the equitable result rather difficult, if not impossible. The Court found that the delimitation was not to be made in accordance with "nice calculations of proportionality."⁶⁶ Thus, whereas the geographic circumstances made it possible for the ICJ in the *North Sea* cases to calculate proportionality "in the form of ratio," in the present case proportionality was used generally "as a factor for determining the reasonable or unreasonable...effect of an equidistance boundary."⁶⁷ The significance of this approach is apparent in the Aegean. As the Greek islands are scattered throughout the Aegean Sea and have different shapes and extend in all directions, it is very difficult to find their exact "coastal front." A related question is whether "one can total up the combined coastal lengths of mainland plus islands."⁶⁸

(d) The Channel Islands and the Enclave Solution

While the two parties agreed with a median line approach, they were in "sharp disagreement" as to the role of the coasts of the Channel islands as

62. *North Sea*, §98.

63. Award, §101.

64. *Ibid.*, §250; see also Evans, "In reality it is not a 'criterion for application' at all," 1989, p.226; see also *Libya/Malta*, §57.

65. Award, §101; see *Dipla*, 1984, p.184.

66. Award, §27; see also the U.K. arguments, §26.

67. *Idem*, §100; see also Weil, 1989, pp.236-237.

68. Bowett, 1979, pp.269-270.

coasts of the United Kingdom opposite those of France.⁶⁹ Like Turkey in the *Aegean Sea* case, France argued that the median line should be "delimited between the mainlands of France and the United Kingdom from baselines taking no account of islands." The solution would be the creation of a coherent continental shelf enclave around them with a three-mile zone of continental shelf in addition to their territorial sea, resulting altogether in a six-mile zone.⁷⁰

The United Kingdom, on the other hand, considered that, because the continental shelf in the entire area is characterized by an essential geological continuity, it can in principle be claimed by both parties and, in the absence of agreement, it can only be delimited by means of a median line since it produces a result which accords with equitable principles.⁷¹ For the purpose of delimiting this median line, the Channel islands should constitute the relevant "opposite" coast of the United Kingdom to France. The Channel islands would be embraced in a deep loop, linking the shelf areas of the islands with the shelf adjacent to the English mainland, and France would have an eastern and western segment of continental shelf in the Channel with a tongue of United Kingdom continental shelf intervening between them.⁷²

The arguments of the parties most relevant to the *Aegean Sea* are the following. France argued that, legally, the concept of islands cannot be a single one in the law of the continental shelf "owing to the almost infinite variation in their geographical circumstances."⁷³ Furthermore, the Channel islands have a different status from that of ocean islands resting on their own continental shelf, and they are so detached from the land mass of the United Kingdom that they lie on the "wrong side of the median line."⁷⁴ The natural prolongation of France somehow goes around the Channel Islands.⁷⁵

The United Kingdom maintained that, in principle, every island is entitled to its own continental shelf. This proposition is contained in Article 1 of

69. Award, §146.

70. Ibid., §149-150.

71. Ibid., §152.

72. Ibid., §154.

73. Ibid., §158; see Turkish *note verbale*, 27 February 1974, *Aegean Sea Pleadings*, pp.23-24.

74. Award, §159; see Turkish argument for "intervening high seas" in Koymen, *IBL*, 1978, p.505.

75. Award §165; similar Turkish argument, UNCLOS III, *Off.Rec.*, III, A/Conf.62/C.2/L.55, art.3 (2), p.230.

the Continental Shelf Convention, which was recognized in the *North Sea* cases "as reflecting, or as crystallizing, received or at least emerged rules of customary law."⁷⁶ Therefore, the United Kingdom put its case on the basis that islands have their own continental shelf and that this is not an extension of the continental shelf of the mainland. These separate continental shelves merge together in mid-Channel.⁷⁷ Only very small islands in certain circumstances, and, namely, when they produce an excessively complicated median line, may not be given full effect. To the contrary, "all true islands generate their own continental shelf irrespective of their location."⁷⁸ This has been confirmed in the *North Sea* cases where the Court spoke only about "islets, rocks and minor coastal projections."⁷⁹

That the Channel islands are not small is made obvious by certain facts as their size, population and economy. Therefore, since they have great economic and political importance, they cannot fall into the category of islands "on the wrong side of the median line" which may be material in the delimitation between opposite states only if applied in cases of islets or very small islands.⁸⁰ If an enclave solution were accepted by the Court, it would have to be at least twelve miles because international law has now clearly accepted a twelve-mile territorial sea and because this is the breadth of the existing fishery zone around the Channel islands.⁸¹

The Court, in order to find where the boundary of the continental shelf should lie according to customary law, used the median line as it is envisaged in Article 6.⁸² After considering that a median line leaves almost equal areas of continental shelf according to equitable principles,⁸³ it found that the coastlines of the mainlands of the two parties "face each other across the Channel in a relation of approximate equality."⁸⁴ Thus, if the Channel islands did not exist, a delimitation in accordance with equitable principles would

76. *Idem*, §168, (*North Sea*, §63); similar Greek argument in *Aegean Sea Pleadings*, p.48.

77. Award, §169; similar Greek argument in Georgacopoulos, *IBL*, 1978, pp.485-486, 493.

78. Award, §171.

79. *Ibid.*, §170; similar Greek argument in UNCLOS III, *Off.Rec.*, II, p. 111.

80. Award, §172-173.

81. *Ibid.*, §179; similar Greek argument in UNCLOS III, *Off.Rec.*, II, p. 285.

82. See Tanja, 1990, p.170.

83. Award, §188.

84. *Ibid.*, §181.

have consisted of a median line boundary which would have left broadly equal areas of continental shelf to each state.⁸⁵

In this context, the Court saw the Channel islands not only on the French side of a mainland-to-mainland median line, "but practically within the arms of a gulf on the French coast."⁸⁶ If full effect had been given to the Channel islands, this would have resulted in a substantial diminution of the area of continental shelf which would otherwise accrue to France. This fact is "creative of inequity" and, if the equidistance-special circumstances rule of Article 6 would apply, this would be considered as constituting *prima facie* a "special circumstance."⁸⁷

The Court's solution to cure this inequity would give nightmares to the Greeks and sweet dreams to the Turks, if it were to be applied in identical terms in the Aegean. First, a primary boundary was drawn according to the median line between the two mainlands. The Channel islands were disregarded and became the subject of a second and separate delimitation where a boundary was drawn at a distance of twelve miles from the baselines of their territorial sea. The result was to enclose the Channel islands in a twelve-mile enclave within an area of French continental shelf.⁸⁸ This was the first total enclave to emerge in state practice.⁸⁹ The Court accepted that islands have a right to a territorial sea of twelve miles by recognizing the potential of an extension of their territorial sea which was at that time three miles.

Several findings of the Court could have some application in the Aegean Sea. Thus, it was found that "there may be some difference in the treatment of islands by reason of their geographical situations, size and importance."⁹⁰ The Court accepted that the islands had their own entitlement to continental shelves "as being the natural prolongation of [their] land territory under the sea."⁹¹ The Court also pointed out that arguments based upon natural prolongation of territory were not of real assistance as sometimes they could be

85. *Ibid.*, §182.

86. *Ibid.*, §183.

87. *Ibid.*, §196.

88. The twelve-mile zone raised serious questions; see Blecher, *AJIL*, 1979, p.79; Dipla, 1984, p.185; Bowett, 1979, pp.223-224.

89. Bowett, *BYBIL*, 1978, p.8.

90. Award, §192.

91. *Ibid.*, §191; Queneudec believes that this was the basic question in the *Anglo-French* arbitration and not the influence of the islands on the median line between the two coasts, *RGDIP*, 1979, p.90.

problematic. For example, France was not able to convince the Court why its natural prolongation in some way "turns around" the Channel islands, while the natural prolongation of these islands does not apply the same way under the sea.⁹² Therefore, the principle of natural prolongation "is neither to be set aside nor treated as absolute in a case where islands belonging to one State are situated on a continental shelf which would otherwise constitute a natural prolongation of the same State."⁹³

However, the most important point for the Aegean Sea was a comment which almost mirrored the geographical circumstances in that sea. According to the Court, the case was "quite different from that of small islands on the right side of or close to the median line, and it is also quite different from the case where numerous islands stretch out one after another long distances from the mainland."⁹⁴ The Aegean islands fall exactly under this example and they cannot be regarded as incidental minor features which are isolated, but "rather as the most salient distinguishing feature" in the Aegean.⁹⁵

(e) Defense, Security and Navigation

Security and defense interests have a particular importance in the Aegean Sea because of the very poor relations between the two countries. In the *Anglo-French* arbitration, France claimed that its security and defense interests in the region would be put in doubt if the continental shelf of the Channel islands and of Great Britain cut the Channel in the middle. Furthermore, it pointed out that in the vicinity of the Channel islands area there existed the port of Cherbourg, which was a naval base for French submarines, and that defense plans going back to the First World War had put the area under French responsibility.⁹⁶

There can be little doubt that all these French arguments could equally be invoked by both Greece and Turkey in the Aegean Sea. The naval bases of the Turkish fleet at the entrance of the straits or the defense and security arrangements given Greece over the control of the Aegean during and after the Second World War could be used as arguments by the two parties.

92. Award, §193.

93. *Ibid.*, §194.

94. *Idem.*

95. Bowett, 1979, p.267; for a delimitation where long chains of islands create a coastal front facing a mainland coast, see also India/Thailand agreement, 22 June 1978, *Maritime Boundary Agreements*, p.209.

96. Award, §161-163.

More important, however, seems to have been the French argument that a maritime route passed through the areas in question. According to Commander Kennedy who spoke at the Geneva Conference about navigable channels, this can be a special circumstance.⁹⁷ France claimed that it had the right to have access to the central part of the Channel as a consequence of the principle of the equality of states,⁹⁸ while no alternative route can be provided for passage through the French territorial waters between the Channel islands and France, due to the narrow and dangerous character of the passages.⁹⁹ These arguments are very similar to the Turkish views that a possible extension of the Greek territorial sea will cut Turkey from access to the central Aegean, while the passages between the eastern Greek islands and the Turkish mainland are very narrow. Moreover, the whole Aegean Sea constitutes an important sea route.

The United Kingdom argued that it too could claim the defense, security and navigational considerations invoked by France, with respect to the Channel islands.¹⁰⁰ Moreover, it observed that the areas in question constitute the busiest international channel in the world and no delimitation between the two countries will change this situation.¹⁰¹

The Court considered that, in this specific case, navigational, defense and security interests in the region did not have any decisive influence on the delimitation because of the importance of the Channel as an international sea route, which serves "ports outside the territories of either of the Parties."¹⁰² These aspects can be used in this specific case only in order to "support and strengthen, but...[not] negate, any conclusions that are already indicated by the geographical, political and legal circumstances of the region." The Court concluded that, as they were presented, these arguments tended to evidence the predominant interest of France in the southern areas of the Channel. This conclusion was reached probably because of the treatment of the port of

97. Award, §162-163; similar Turkish argument in Umar, *CRev*, 1982, p.145.

98. Award, §165.

99. *Ibid.*, §162.

100. *Ibid.*, §175; UNCLOS III, *Off.Rec.*, II, p.285.

101. Award, §176; similar Greek argument in UNCLOS III, *Off.Rec.*, III, A/Conf.62/C.2/L.23, art.8 (5), p.201.

102. Award, §188, §161; see also Bowett, in relation to Cherbourg, the port for French submarines, *BYBIL*, 1978, p. 8, fn.1.

Cherbourg.¹⁰³ More generally, the Court accepted that defense and security interests were capable of being relevant circumstances.¹⁰⁴

(f) An Overview

The Court of Arbitration faced a difficult task. It was just the second decision which settled a continental shelf boundary while at the same time the delimitation law was in a state of flux because of the work of UNCLOS III and the enormous influence exercised by the 1969 judgment upon many states. The Court tried to clarify the relationship between customary law and conventional law as it was embodied in the Geneva Convention. The concept of natural prolongation, which was of major relevance in the *North Sea* cases, was played down, while its ability to serve as a criterion for most delimitation disputes was questioned. On the contrary, the geographical factors, which were present in the 1969 judgment as well, were emphasized mainly in contradistinction to the geological factors.¹⁰⁵

Another important element of the Award was the undermining of the role of equidistance in the Geneva Convention. The equidistance and the special circumstances were considered as constituting a combined rule and not as one rule and one exception. Equally important was the assimilation of the special circumstances proviso of Article 6 into factors creative of inequity although the relation between Article 6 and customary international law was not made clear.¹⁰⁶ Of interest also was the approach of the Court to the proportionality factor and its restrictive interpretation within the context of insular and mainland coasts.¹⁰⁷

An important element which can be linked with the Aegean Sea was the view of the Court in relation to the Channel islands. The presence of these remote islands in front of the French coasts, disconnected from the British peninsula, was considered as upsetting the geographical balance between the two countries.¹⁰⁸ Nevertheless, the application of this criterion in the circumstances of the Aegean Sea is very difficult because the islands are the domi-

103. Bowett, *BYBIL*, 1978, p.8, fn.2.

104. See Evans, who states that the Court considered security and defense interests as special circumstances, 1989, pp.173-174.

105. Dipla, 1984, p.183.

106. Brown, [2], p. 529.

107. This was a welcome sign according to Brown, [2], p.529; Bowett, *BYBIL*, 1978, p.17; see also Dipla, 1984, p.184.

108. Dipla, 1984, p.184.

nant feature in that sea and are not isolated and detached.¹⁰⁹ Moreover, the way that the disputed area was delimited gives the impression that it was equitably shared between the two states. Such an approach is difficult to apply in the Aegean Sea because it is difficult to determine those areas which can be attached to the islands and those which can be attached to the mainland.¹¹⁰

There were also some questions that the Award did not touch upon what could have application in the Greek-Turkish conflict. It was determined whether islands could influence the classification of two mainland coasts as opposite or adjacent.¹¹¹ More important, no light was shed on the question of what the coastal front of an island is and whether it extends radially or only to one direction, namely, that of the coast of the other state.

3. BILATERAL NEGOTIATIONS AND UNCLOS III

(a) *New Expressions, Old Aims*

After the genesis of the Aegean Sea problem and during the work of UNCLOS III, Greek arguments in relation to the continental shelf generally remained the same with the exception of the resumption of direct negotiations between the two countries after the Bern Agreement. In contrast, however, Turkish views experienced significant changes. The Continental Shelf Convention of 1958, which was used jointly with the general rules of international law as the basis of the Turkish arguments concerning the Aegean continental shelf question in the first Turkish *note verbale* in February 1974, has never reappeared in Turkish terminology.¹¹² This development can be undoubtedly connected to the work of UNCLOS III during the summer of 1974, where it became apparent that the Geneva Convention was not necessarily accepted by many states.

A second term which stopped appearing in Turkish terminology was Article 33 of the Charter of the United Nations. The appeal to Article 33 was not only raised in bilateral relations between Greece and Turkey,¹¹³ but Turkey also included Article 33 in its draft articles concerning delimitation

109. Bowett, 1979, p.267.

110. Bowett, *BYBIL*, 1978, p.15; Bowett, 1979, p.265.

111. Bowett, *BYBIL*, 1978, p.19.

112. Turkish *note verbale*, 27 February 1974, *Aegean Sea Pleadings*, p.23.

113. See, e.g., Turkish *note verbale*, 30 September 1975, *Aegean Sea Pleadings*, p.36.

issues.¹¹⁴ This Turkish insistence on quoting Article 33 in order to strengthen the view that the Aegean continental shelf problem should be solved through bilateral negotiations is inexplicable. Article 33 specifically refers to negotiations as well as to arbitration or judicial settlement as one of the peaceful means to solve a dispute. After the ICJ confirmed that "negotiation and judicial settlement" are enumerated together in Article 33, Turkey never again mentioned Article 33.¹¹⁵

The most important development in the revised Turkish approach was the adoption of a new concept, that of equity. The meaning of the term "equitable" as used initially in Turkish documents was synonymous with the meaning of that term as it is used in everyday life and language. This is apparent in the examples given below from two abstracts of Turkish *notes verbales* where the word "equitable" could be replaced by the word "reasonable":

the delimitation of the continental shelf can only be realized jointly if an equitable solution, acceptable to both sides, is found¹¹⁶

a mutually acceptable settlement of the delimitation shelf areas in the Aegean Sea is important¹¹⁷

Progressively, the concept of equity started to appear more often:

Turkey proposed...on solving the differences on the Aegean continental shelf...in a just and equitable manner¹¹⁸

The Aegean continental shelf question stems from the Greek reluctance to share equitably a continental shelf between two coastal States in the Aegean sea¹¹⁹

This approach was related to two general developments. The first event was the use in the *North Sea* case and the *Anglo-French Continental Shelf* arbitration of the concept of equity as an independent factor of delimitation, separate from any legal norms. The second development was the work of UNCLOS III.

114. For example, Doc. A/Conf.62/C.2/L.9, UNCLOS III, *Off.Rec.*, III, p.188.

115. See also *Aegean Sea Pleadings*, p.517; argument, O'Connell, pp.322-323.

116. Turkish *note verbale*, 18 November 1975, *Aegean Sea Pleadings*, p.41.

117. Turkish *note verbale*, 15 March 1976, *Aegean Sea Pleadings*, p.44.

118. Turkish *note verbale*, 6 February 1975, *Aegean Sea Pleadings*, p.31.

119. Letter of Turkish representative to the Security Council, 18 August 1976, *Aegean Sea Pleadings*, p.30.

Although equity, a principle which derives its origins from Aristotle,¹²⁰ was mentioned in the Truman proclamation of 1945, it was not expressly referred to in the 1958 Continental Shelf Convention. However, after the *North Sea* cases, it occupied a special place in the delimitation of the continental shelf.¹²¹ The 1969 judgment has exerted an immense influence on several delegates to base delimitation more closely on the concept of equity. What really attracted these states?¹²² If equity is taken as a corrective principle, capable of application every time the rule of law leads to an inequitable result, then it can be presumed that equity existed in the minds of those who supported the adoption of the special circumstances proviso¹²³ and it therefore exists in Article 6 of the Geneva Convention.

If, on the contrary, equity is seen as the Procrustean bed where each specific case will be treated differently from the others, and independently of any rule of law, with the ultimate aim to achieve an arbitrarily named "equitable" result, then this approach opens the door to obscure interpretations of what is equitable.¹²⁴ It seems that this second approach was more favorable among the member states of the pro-equity group, and this approach encouraged Turkey to progressively abandon the notion of natural prolongation in favor of equitable principles.

Natural prolongation in a geomorphological sense was considered by Turkey as offering some advantages for its claims over the Aegean. Nevertheless, the Court in the *Anglo-French* arbitration did not pay particular attention to the geomorphological characteristics of the sea-bed. Furthermore, it offered the Channel islands an enclave of twelve miles. The application of this solution to the Aegean would have been tantamount to a territorial sea of twelve miles.

Until the *Anglo-French* arbitration, Turkey insisted that a universal limit of twelve miles for the territorial sea was unacceptable. After this case,

120. "I have next to speak of equity [*ἐπιείκεια*] and the equitable and to show how equity is related to justice and the equitable to the just....," Aristotle, *Nicomachean Ethics*, VII, 9, 17, 9-10, 31-33.

121. On the notion of equity in international law generally before 1969, see Mouskheli, *RGDIP*, 1933, pp.347-373; Jenks, 1964, pp.316-427.

122. On the roles of equity, see Nelson, *AJIL*, 1990, pp.837-858.

123. But Nelson: "equity must have been in the minds of those who supported the adoption of the special circumstances proviso," *RIRI*, 1978, p.209.

124. For "Exemples confirme la subordination des principes de l'équité au droit;" see Reuter, *RBeldI*, 1980, pp.165-179.

Turkish policy changed. Since natural prolongation could not offer any substantial help, the thrust of the Turkish arguments was transferred on to the equidistance principles. While the twelve mile limit was still unacceptable, equitable principles were called to correct the inequities caused by such a limit. In the session of 1977, before the *Anglo-French* arbitration, Turkey proposed, together with several other countries, an article which deprived islands of any continental shelf or EEZ if they were situated on the continental shelf or the EEZ of another state, or if they could affect the normal continental shelf or EEZ of other states.¹²⁵

In 1978, and because of the arbitration award and the wide support concerning the adoption of a median line for territorial sea delimitations, Turkey proposed another article which made no distinction among the several maritime zones of an island. It provided as follows:

Islands which because of their geographical location constitute a source of distortion or inequity in the drawing of a boundary line between two or more adjacent States shall have marine spaces only to the extent compatible with equitable principles and with all geographic and other relevant circumstances.¹²⁶

Also, while in 1976 Turkey supported a draft article asking that consideration be given to "physical and geological features as well as special circumstances" for delimitation purposes,¹²⁷ in 1978 it proposed, together with other members of the pro-equity group, that delimitation "shall be effected by agreement, in accordance with equitable principles taking into account all relevant circumstances and employing any methods, where appropriate to lead to an equitable result."¹²⁸ The physical and geological features were already elements of the past.

(b) *Developments in UNCLOS III*

Greece has not changed either its policy or its terminology. In the 1978 session, it supported, together with the pro-equidistance group, an article

125. Doc.A/Conf.62/C.2/L.96, UNCLOS III, *Off.Rec.*, VII, p.84.

126. *Regime of Islands*, Doc. C.2/Informal meeting/21 of 28 April 1978, pp.88-89. The same article in paragraph 3 was introducing "islets" without defining their specific criteria.

127. Platzoeder, IV, pp.319-320.

128. Platzoeder, IX, 1986, pp.392-393; see UNCLOS III, *Off.Rec.*, X, pp.124-125, 170-172.

calling for the use of the equidistance/median line for delimitation of the continental shelf and the EEZ.¹²⁹ It also expressed the belief that the article concerning the regime of islands was exhaustively discussed and settled in a satisfactory manner since it was recognizing islands' maritime zones on an equal footing with those of mainlands. It pointed out, however, that it would not object to a deletion of paragraph 3 of the proposed article which was included in the Revised Single Negotiating Text in 1976 and has remained unchanged since that date.¹³⁰ According to this paragraph, rocks which cannot sustain human habitation or economic life of their own do not have any continental shelf or EEZ.

At the Eighth and the Resumed Eighth Session of the Conference it was clear that the negotiations over delimitation of the continental shelf and the EEZ were facing a total deadlock.¹³¹ As the chairman of NG7 noticed in his report, the Negotiating Group on delimitation had convened 51 times and had not been able to reach agreement.¹³² For this reason, the chairman proposed a neutral and meaningless formula which did not classify in any hierarchical way the elements concerned. The formula referred to the agreement which should be concluded after taking into account the relevant and special circumstances in accordance with equitable principles and after applying the equidistance rule or other means.¹³³

Turkey, speaking on behalf of the pro-equity group rejected this formula because of its neutrality. According to the Turkish delegate, the Conference should also give further consideration to the regime of islands and semi-enclosed seas.¹³⁴ Greece, on the contrary, accepted the neutral formula, although it did not consider it satisfactory, because "it was necessary to find a genuinely neutral solution which did not favour any State at the expense of another."¹³⁵ The Greek interest in this session was, however, focused on the provisions concerning the settlement of disputes. After the rejection of the

129. See generally Oxman, *AJIL*, 1979, p.1ff; on the debates in NG7 see Jacovides, *MP*, 1979, pp.283-287.

130. See *Regime of Islands*, p.85.

131. See generally Oxman, *AJIL*, 1980, p.1ff.

132. UNCLOS III, *Off.Rec.*, XII, p.107.

133. Report of the chairman of the work of NG7, Doc.A/Conf.62/62, UNCLOS III, *Off.Rec.*, XI, p.5.

134. UNCLOS III, *Off.Rec.*, XI, p.62.

135. UNCLOS III, *Off.Rec.*, XI, p.64; on the settlement of disputes, see also Jacovides, *MP*, 1979, p.287.

Greek appeal by the ICJ, the Greek delegation turned to this issue and favored a formula compatible with the idea of compulsory adjudication. The relevant text, which was proposed by the chairman of NG7, stated that the parties to a dispute shall accept its submission to a conciliation commission.¹³⁶ Greece considered this conciliation procedure as inappropriate because "delimitation was not a political but a legal issue and a binding adjudication could be made only by a legal body."¹³⁷

While the battle between the pro-equidistance and the pro-equity groups continued at the Ninth Session in New York,¹³⁸ Greece and Turkey focused their attention mostly on the article concerning the regime of islands. Greece expressed its satisfaction that this article remained completely irrelevant to any provisions on delimitation during the previous sessions.¹³⁹ Furthermore, it pointed out in relation to the various delimitation proposals, that the duty of UNCLOS III was to promote "balanced and flexible provisions without creating 'winners' or 'losers'."¹⁴⁰ On the other hand, Turkey mentioned that the proposed article on islands was out of harmony with international law as well as with the articles on the delimitation of the territorial sea, the continental shelf and the EEZ.¹⁴¹ In order to reestablish the necessary link between these articles, it proposed an informal document concerning islands whose presence in the delimitation area might have a negative influence on the boundary. These islands could not claim any maritime zones.¹⁴²

During the same session, Turkey started to carefully avoid becoming involved in the developments that had taken place in the context of the various Committees in UNCLOS III. Thus, it submitted an informal proposal where it pointed out that the application and interpretation of the provisions of the future convention ought to occur with "due regard for the special characteristics of different geographical regions and the specific circumstances of individual cases."¹⁴³ With this proposal, Turkey aimed to highlight the crucial impor-

136. See report of the chairman, UNCLOS III, *Off.Rec.*, XI, p.60.

137. UNCLOS III, *Off.Rec.*, XI, p.11.

138. See generally Oxman, *AJIL*, 75, 1981, p.211ff.

139. The same view in Gounaris, *RHellDIP*, 33, 1980, pp.118-119.

140. UNCLOS III, *Off.Rec.*, XIII, p.26; see also Brown, *MP*, 1981, pp.179-182.

141. UNCLOS III, *Off.Rec.*, XIII, p.27.

142. UNCLOS III, *Off.Rec.*, XIV, 140th meeting, par. 55; informal document contained in Doc. C.2/Informal Meeting/21, Resumed Ninth Session, 1980.

143. Platzoeder, Vol. XVI, p.395.

tance of securing the minimum conditions under which it would be able to adhere to the future convention.

At the Tenth Session in 1981, it was obvious that the outstanding core issue of the Conference was the delimitation of the continental shelf and the EEZ. Greece and Turkey, as members of the two groups in NG7, negotiated directly under Koh, the president of UNCLOS III. On the eve of the presentation of a more or less crystallizing text, Koh managed to provide a provision of delimitation:

The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.¹⁴⁴

The terminology which was backed so intensively by two groups had been swept aside. The members of the two groups seem to have realized the utmost importance of reaching an agreement over a compromise text, and they showed "widespread" and substantial support for the proposal.¹⁴⁵

(c) *The Montreux Summit*

During the same period, and despite Greece's application to the ICJ for delimitation of the continental shelf, the two countries continued their direct negotiations in the lead up to the hearing of the judgment. The most important of these occurred at the so-called "Montreux Summit" which took place in March 1978 between the prime ministers of Greece and Turkey, Constantine Karamanlis and Bulent Ecevit, respectively. During the meeting, which took place in a friendly atmosphere, the two leaders decided to establish a "friendly and sincere dialogue"¹⁴⁶. After the summit, Karamanlis told the press that both leaders "gave priority to the question of the procedure on the basis of internationally accepted methods." The Turkish press, according to leaked information, referred to a proposal made by the Turkish prime minister for co-exploitation of the common resources in the Aegean on an equitable basis¹⁴⁷.

144. Doc.A/Conf.62/L.78. For a critical commentary of this proposal, see Oxman, B.H., "The Third United Nations Conference on the Law of the Sea: The Tenth Session," *AJIL*, 76, 1982, p. 15.

145. Report of the President, UNCLOS III, *Off.Rec.*, XV, p.39.

146. Communiqué conjoint, Montreux, 11-3-1978.

147. *Milliyet* (Istanbul newspaper), 13/14 March 1978.

In Greece, there was for several years the belief that the two prime ministers had signed during the Montreux Summit a "secret" agreement according to which both countries should abstain from any research or exploitation in the Aegean continental shelf¹⁴⁸. This belief was further strengthened in May 1978 when the director of the Greek State Oil Company (DEP), Zachos, said that his company, according to the government's orders, would not continue any further exploitation activity in the Aegean¹⁴⁹. Some years later, in 1986, more information was given about the Montreux Summit. Mr. Ecevit explained that, in spite of the amicable atmosphere, the two prime ministers had not agreed on anything and thus they left matters to be reviewed through normal (diplomatic) channels in the meantime.¹⁵⁰ This view was further confirmed in 1997 when Constantine Karamanlis published part of his archives referring *inter alia* to the Montreux Summit.¹⁵¹

After the Montreux Summit, the negotiations between the two countries continued and were marked by American suggestions for a negotiated settlement. It was within the context of this "Camp David" approach that the two prime ministers met again at Blair House in Washington on 30 May 1978 where Karamanlis made a proposal for a non-aggression pact which was not welcomed by Turkey.¹⁵² Nevertheless, Greece did not accept the American suggestions since they were considered as legitimizing many Turkish claims and especially the Turkish desire for a political rather than a legal settlement.¹⁵³

(d) The Perspective of Joint Exploration and Exploitation and the Jan Mayen Conciliation

Joint exploration and exploitation of the natural resources of disputed areas is a relatively new phenomenon.¹⁵⁴ The cases in which this phenomenon

148. See in general Athens newspapers, 12/13 March 1978.

149. *Technical Chronicles*, 1978, p.5-6. A typical example of this belief is the book written by Markoyannis, 1981.

150. Statement made by Ecevit to the Turkish press on 12 August 1986. Statement made by Karamanlis, Press Office, 10 August 1976. See also Marangos, 1987, pp.19-21, 34-36 and 81-121.

151. Karamanlis, Vol.10, Chapter on Greek-Turkish relations and the Montreux Summit.

152. The first proposal for a non-aggression pact was made on 17 April 1976; see U.N.Doc. S/12168/10 August 1976.

153. Coufoudakis, in *The Greek-Turkish Conflict in the 1990s*, 1992, p.45.

154. A prime example is considered to be Article IV of the Antarctic Treaty of 1959.

was developed can be divided into those cases involving areas where there are already discovered deposits and those cases involving areas where deposits may be discovered in the future.¹⁵⁵ The merit of a joint development zone in comparison with a delimitation lies "in minimizing the potential for conflict, often by eliminating competition over the ownership of resources."¹⁵⁶

The prospect of joint development in the Aegean Sea between Greece and Turkey has not been left totally off the agenda. It had been proposed for the first time by Turkey in a meeting of the foreign ministers of the two countries in May 1975 in Rome¹⁵⁷ and was repeated during the *Sismik-I* crisis in the summer of 1976.¹⁵⁸ The Greek position towards this matter was revealed in response to an article in *The Economist* in 1976.¹⁵⁹ Greece was not opposed in principle to the idea of joint exploitation of the natural resources of the sea-bed. However, it accepted this possibility subject to three conditions: (i) the joint development zone should be limited to a part of the Aegean continental shelf and should not be extended to the entire sea-bed; (ii) the natural resources in the joint development zone must first be assessed for each state in order that the benefits would be shared in proportion to the contribution of each partner; and (iii) this presupposed that the shelf area should be delimited before the establishment of any common ventures. If these conditions could not be fulfilled, then joint exploration would not solve the difference and would create more problems.¹⁶⁰ The Greek position since that period remains unchanged.

The Turkish position, as presented in the various meetings between Greek and Turkish experts in 1976, was different. Turkey wanted to reach an agreement on the idea of joint exploitation to determine the areas of exploitation and to institute the appropriate mechanism for conducting it. This proposal was not a function of delimitation but was made in order "to avoid the

155. For more, see Onorato, *ICLQ*, 1968, p.85ff; Lagoni, *AJIL*, 1984, p.345ff.

156. Richardson, *AJIL*, 1988, pp.448-449.

157. Turkish *note verbale*, 30 September 1975, *Aegean Sea Pleadings*, p.35.

158. Letter of the Turkish foreign minister to U.N. secretary general, U.N. Doc.S/12182/20 August 1976.

159. See "The Aegean and the Aesop" in *The Economist*, 21 August 1976.

160. See letter of Greek ambassador to *The Economist*, 11 September 1976; also response of the under-secretary of the Greek Foreign Ministry to the Greek parliament, 21 October 1976, in Sazanides, 1979, p.335.

difficulties of delimitation.”¹⁶¹ The Turkish position remains unchanged as well.¹⁶²

Under these circumstances, the report of a conciliation commission in 1981 concerning a maritime delimitation between Iceland and Norway in the Jan Mayen area is not without significance.¹⁶³ The importance of the recommendations of the commission for the delimitation of the Jan Mayen continental shelf in relation to the Aegean Sea rests on two elements. The first concerns the findings of the commission with respect to the insular continental shelves.

Iceland and Norway were in disagreement over the establishment of a boundary for their continental shelves. They requested that a conciliation commission recommend a dividing line between the shelves of Iceland and Jan Mayen. This commission, “although not a Court of law,” examined state practice, court decisions and the developments of international law of the sea in UNCLOS III.¹⁶⁴

Iceland denied to Jan Mayen any economic zone or continental shelf either on the grounds that this remote island fell under the definition of rocks which cannot sustain human habitation and economic life of their own, of Article 121 of UNCLOS III, or on the grounds that it was a mere protuberance of the Icelandic continental shelf.¹⁶⁵ The commission considered that Article 121 of the Draft Convention UNCLOS III reflected the status of international law on this matter without giving evidence or arguments in support of this statement.¹⁶⁶ Thus Jan Mayen, as an island, was found to be “entitled to a territorial sea, an economic zone and a continental shelf.”¹⁶⁷

The second element is that the commission found that the geological aspect could not have any application in the delimitation area because of the

161. Bilge, Third Greek-Turkish Meeting, 2 February 1976, *Mediterranean Continental Shelf*, p.1563.

162. Information provided to the author by officials of the Turkish Embassy in Athens, 19 November 1992.

163. Report and the Recommendations of the Conciliation Commission, *ILM*, Vol.XX, p.797ff (thereafter *Jan Mayen Report*.)

164. *Jan Mayen Report*, p.823; see also Dipla for the “*raisons que le rapport de la commission à sa place parmi les autres cas de jurisprudence*,” 1984, p.194.

165. See Churchill, *MP*, 1985, p.19-20.

166. But see Churchill, disagrees for par.3 of Article 121, *ibid.*, fn.20.

167. *Jan Mayen Report*, p.804.

geological nature of the Jan Mayen ridge. Despite the fact that there was enough evidence for the geomorphological criterion to be applied in the area, the commission thought that the concept of natural prolongation could not form any suitable basis for the delimitation.¹⁶⁸ On the contrary, the median line which provides "an equitable solution" and the special circumstances which "accommodate the relevant factors of each case" were considered as important for the drawing of a boundary.¹⁶⁹ Finally, Iceland's need for hydrocarbons was recognized by the commission as important.¹⁷⁰

Having these criteria in mind, the commission, rather "than propose a demarcation line for the continental shelf [which was] different from the economic zone," recommended the adoption of a joint development agreement covering the area where the only real prospect for hydrocarbons existed.¹⁷¹ This recommendation is the second fact which is directly relevant to the Aegean Sea.

The commission proposed that the joint development should extend to a limited area of 45,475 sq. km. between Jan Mayen and Iceland. The area within the 200-mile zone of Iceland comprises some 12,725 sq. km.¹⁷² The commission recommended that in the area south of Iceland's 200-mile zone, Iceland oil legislation should apply. Norway would be allowed to participate with only a 25% interest in any joint venture arrangements. In the area to the north of the zone, Iceland would have the opportunity to acquire a 25% interest in the arrangements.¹⁷³ Thus, the commission proposed the joint development after having previously established a quasi-dividing line along the 200-mile economic zone of Iceland.¹⁷⁴ Since joint exploration and exploitation of the areas disputed by Greece and Turkey is often proposed as a solution in the Aegean, the recommendations of the Jan Mayen commission could form the basis of such a solution.

168. Morphologically, the Jan Mayen ridge was considered as an extension of Jan Mayen island and not of Iceland, *ibid.*, pp.813-814, 822; see also Tanja, 1990, fn.755, p.277.

169. *Jan Mayen Report*, p. 824; see also Evensen, *AFDI*, 1981, p.1ff.

170. For more, see Bowett, in *International Law at the Time of its Codification*, 1987, pp.52-53.

171. But see Ostreng, W., that the commission gave the impression that a continental shelf beyond the 200-mile economic zone was legally possible, *MP*, 1986, p.139.

172. *Jan Mayen Report*, p. 827.

173. *Ibid.*, pp.836-839. Appendix, 10.

(e) *The End of Negotiations: An Overview*

In the meantime, the deterioration in Greek-Turkish relations after the Montreux Summit, as well as political instability and increasing terrorism in Turkey, made the negotiation process very difficult.¹⁷⁵ A new defense concept was adopted by Turkey in 1978, which, although its details were unclear,¹⁷⁶ placed, according to Greek sources, larger Turkish forces along the Aegean coasts. In 1979, the Greek defense minister, Evangelos Averoff, proclaimed in the Greek parliament that Greece was no longer facing a communist threat, thus making the point that the only enemy was Turkey.¹⁷⁷ In February 1980, after negotiations between the two countries, Turkey announced that, as a "good will gesture," it would cancel NOTAM 714, while Greece, in response, withdrew NOTAM 1157, and the airspace of the Aegean was opened again to international air navigation. Several days after these announcements, Turkey explained that its initiative did not mean that it had relinquished any of its rights over the Aegean. In 1980, during negotiations for the reintegration of Greece into NATO's military wing (after 1974, following the failure of the Alliance to intervene in the Cyprus crisis, Greece had withdrawn its military forces from NATO command), Turkey attempted to alter the pre-1974 status quo in the Aegean with proposals for new command and control arrangements in the Aegean.¹⁷⁸

The bilateral contacts concerning the continental shelf continued to take place at a variety of levels, but with no practical results until September 1980 when, following a military coup, the army took over the government of Turkey. The Greek government, although there were no talks between the two countries, continued to respect the Bern Agreement until August 1981 when the Greek minister of industry, Stephanos Manos, announced to the Canadian-led international oil consortium of the northern Aegean that it could start exploration east of the island of Thassos.¹⁷⁹ In September 1981, the minister of defense, Averoff, said that "there are no longer any reasons preventing any

174. See Gounaris, *AdVölk.*, 1983, p.500.

175. In October 1979, Turkish elections overthrew Ecevit's parliamentary majority. By September 1980, Turkey was in a state of virtual civil war.

176. See the principles of the New Defense Concept, in *Survival*, September-October, 1978.

177. Woodhouse, 1982, p.267.

178. See *supra*, pp.20-22.

179. See *To Vima* (Athens newspaper), 25 May 1988; Manos, *Samizdat* (Greek magazine), 6 August 1997, p.5.

exploitation of the continental shelf."¹⁸⁰ Less than two months later, the Greeks elected the first socialist government in the history of their country. A new chapter in Greek-Turkish relations began.

Between 1973 and 1981, the whole complex of differences known collectively as the Aegean question was progressively set down. Only one issue, that of the eastern Aegean air routes, was partly solved. But, even in that case, the disruption of international air navigation proved harmful only to Turkey since all aircraft flying to or from that country were diverted to a large detour over Bulgaria.¹⁸¹

The delimitation of the continental shelf still constituted the central problem in Greek-Turkish relations. This was not only a natural consequence of the Greek approach, which did not consider that any other differences in the Aegean existed except the demarcation of the continental shelf, but was encouraged by the Turks as well who, with one exception, that of the fortification of the eastern Aegean islands, were advancing claims connected only indirectly to the continental shelf. The Greek territorial waters, the airspace of the Athens FIR where jurisdiction was claimed and the limits of NATO air operational control over the Aegean were all used to strengthen the Turkish view that the delimitation line between Greece and Turkey in the Aegean should be a median line between the two mainlands.

Finally, the Aegean question was seen by Turkey as a political problem which needed political solutions beyond any legal rules. In contradiction, Greece insisted that the problem was solely that of the delimitation of the Aegean continental shelf, a purely legal problem.

180. See letter of Averoff to the prime minister, George Rallis, and to the minister of industry, Stephanos Manos, 10 September 1981.

181. E.g. problems with direct flights from Berlin to Istanbul over Bulgaria which obliged aircraft to stop over in Germany in order to grant overflight rights; see correspondence between the foreign minister of Germany, Genscher, and the foreign minister of Greece, Bitsios, 11 and 19 December 1974, in Sazanides, 1987, pp.182-189.

7. The Papandreou Era in Greece and the Boom in Third-Party Delimitations, 1982 to 1986

A. BILATERAL RELATIONS

1. INTRODUCTION

The electoral victory of Andreas Papandreou's party, the Panhellenic Socialist Movement (PASOK), in October 1981, was a cause of concern not only for Turkey but for the EEC countries and NATO generally. The leftist-populist ideology of the former Berkeley professor, as expressed in the pre-election period, had sparked comments and speculation on the future direction of Greek foreign policy.¹ PASOK's declared position concerning Greek-Turkish relations was that it was only possible to have a dialogue between the two countries relating to issues which did not involve legally established sovereign rights, since "the Greek land, sea, air and underwater boundaries were not negotiable".² Papandreou had also argued that Turkey posed a threat to Hellenism at large, a view shared by all the Greek political world.³

Papandreou's victory in the elections produced dismay in Turkey. Nevertheless, the ruling generals in Ankara adopted a "wait-and-see" attitude since they had more pressing things to think about in their domestic policy than a possible conflict with Greece.⁴ They did not wait long. Papandreou adopted a more pragmatic approach to foreign policy than his declared thesis would have suggested.⁵ He took the initiative and extended an "olive branch" to Turkey in November 1981, some weeks after the elections. He asked for "Turkey's friendship but not at the expense of an inch of Greek soil." As he explained, Greece had no claims against Turkey, but in the meantime was not willing to

1. *The Economist*, 15 August 1981, pp.48-50.

2. *The Manifesto of PASOK*, 1981.

3. See Coufoudakis, in *The Greek-Turkish Conflict in the 1990s*, 1992, pp.41-56. For the positions of Turkish political parties towards Greece, see in the same book Birand, pp. 27-39.

4. *The Economist*, 24 October 1981.

5. Coufoudakis, *CHist.*, 1982, pp.426-431; also *JMGS*, 1983, pp.373-392.

sacrifice any of its sovereign rights. He started a dialogue with the Turkish ambassador in Athens. Thus, PASOK pursued a pragmatic operational policy towards Greek-Turkish relations, although this foreign policy was a continuation of Greek foreign policy since 1974. Nevertheless, on 9 December 1981, a NATO joint communiqué was blocked by Papandreou because the Alliance refused to guarantee Greece's eastern frontiers.⁶

At the end of January 1982, the Greek State Oil Company (DEP) conducted seismic research east of the island of Thassos and outside Greek territorial waters.⁷ In February 1982, the government in Ankara lodged a protest with the Greek government about the exploitation program, which it regarded as being contrary to Article 6 of the Bern Agreement.⁸ In its reply, the Greek government claimed that the protest was without basis on the grounds that the Bern Agreement was inoperative and therefore Greece was not bound by it.⁹ Greece also explained in its reply that the research activity "*à ce moment*" was not a harbinger of any exploitation of the continental shelf.

2. DID THE BERN AGREEMENT TERMINATE?

A basic characteristic of the Bern Agreement and an element of friction between the two countries is that it did not lay down any time limits. As for the day of its entry into force, the situation is quite simple. Failing any provision or agreement concerning this matter, "a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States."¹⁰ Since the Bern Agreement established a framework for negotiations, its entry into force was immediate or at least it came into force on the first meeting of the experts of the two countries on 31 January 1977. The main problem with the Bern Agreement is that it did not provide anything on the termination or suspension of its validity. This situation became subject to different interpretations by the two states.

6. *Kathimerini* (Athens newspaper), 10/11 December 1981; also Clogg, R., [2], in *The Greek-Turkish Conflict in the 1990s*, 1992, p.18.

7. See announcement of the Greek minister of industry, Manos, *To Vima* (Athens newspaper), 25 May 1988.

8. It is interesting that the Turkish government did not make any protest in relation to exploration and exploitation permits granted to Shell in May 1980 in areas of high seas in the northwestern Aegean, Manos, *Samizdat* (Greek magazine), 6 August 1997, p.6.

9. See book of Greek Deputy Foreign Minister Yannis Kapsis, 1990 pp.31-32.

10. Article 24(2), Vienna Convention on the Law of Treaties.

According to the Turkish interpretation, since there was no time limit, the agreement applied to relations between the two countries for an indefinite period. Therefore, Greece was not allowed to take any initiative relating to the Aegean continental shelf for as long as it remained undelimited.¹¹ This constituted Turkey's official explanation of the March 1987 crisis when Greece was considered to be violating the Bern Agreement.¹² According to the Greek interpretation, the Bern Agreement provided a framework for negotiations for as long as negotiations between the two countries were taking place. Since the negotiations were terminated some three years after the Agreement, there was no obligation on the part of the two countries to abide by the clause which suspended action on the continental shelf.

The problem of the termination of the Bern Agreement is not an easy one. On the contrary, "one of the most difficult and practically important questions of the law of the treaties relates to the termination of treaties which contain, at any rate in their expressed terms, no provision for that purpose."¹³ According to the Vienna Convention, "the presumption is that the treaty is not subject to denunciation or withdrawal."¹⁴ In theory, this is due to the significance of the principle *pacta sunt servanda*. Doctrine and state practice, however, as well as the Vienna Convention, have recognized the existence of certain limited exceptions to the general rule.¹⁵ The answer to the right of denunciation of a treaty containing no provision for denunciation would have to be settled by elucidating the intention of the two countries and by the nature of the Bern Agreement.¹⁶

Even before the Vienna Convention, J. L. Brierly had suggested a *modus vivendi* treaty as an example of the treaties with respect to which a right of denunciation ought to be implied.¹⁷ The Bern Agreement undoubtedly falls within this category since it was agreed that it would serve as a *modus vivendi* between the two countries concerning activities over the Aegean

11. Statement of the spokesman of Turkish Ministry of Foreign Affairs, *Kathimerini* (Athens newspaper), 6 March 1987.

12. Letter of Turkish representative to the U.N. Secretary General, U.N. Security Council, S/18759, 23 March 1987.

13. Brierly, 1963, p.330.

14. Brownlie, 1990, p.617.

15. See Widdows, *BYBIL*, 1982, pp.83-114.

16. Article 56 (1) Vienna Convention on the Law of Treaties. Before the Vienna Convention, see McNair, 1961, pp. 511-512; Brierly, 1963 p. 331. See also Sinha, 1966.

17. Brierly, 1963, p. 331.

continental shelf pending the conclusion of their negotiations. The conducting of negotiations between the two countries was the aim of the conclusion of the Agreement. The creation of a supportive climate for these negotiations was the reason for which this *modus vivendi* was established.¹⁸

The negotiations started on 31 January 1977 in London where the mixed Greek-Turkish commission, which was stipulated in paragraph 9 of the Bern Agreement, had its first meeting.¹⁹ After this meeting and until 1980, experts of the two countries met several times without any practical result.²⁰ In August and September 1981, the Greek government denounced in practice the Bern Agreement by considering that there were "no longer any reasons preventing the exploitation of the continental shelf."²¹ Although no negotiations were taking place between the two countries and, therefore, Greece had the right to terminate the Bern Agreement because the reason for its existence had vanished, it seems that this right was not validly exercised. The provision of giving not less than twelve months' notice of its intention to do so is necessary if a state is to validly exercise the right of denunciation or withdrawal from a treaty.²² This requirement, however, was fulfilled in February 1982 when the Greek government officially announced its decision. The Bern Agreement, therefore, can be properly considered as terminated only after February 1983.

3. A PERIOD OF TENSION

Nevertheless, the dialogue between the two countries continued and the two governments agreed to respect a truce entered into on 22 July 1982, which the Greeks called a "moratorium" and the Turks a "gentlemen's agreement." This moratorium was intended to create a climate conducive to negotiations. According to the terms of this agreement, the two countries, in order to consolidate their spirit of conciliation and without departing from their respective views and positions on the fundamental issues underlying Greek-Turkish relations, agreed to abstain from any provocative acts and statements for an inde-

18. See Satow, 1958, p.349.

19. Sazanides, 1979, p.388, II-51.

20. See Sazanides, 1979, pp. 120-122; Bilge considers that the negotiations lasted five years, in "Discussions," in *The Aegean Issues: Problems and Prospects*, 1989, p.10; for a summary of the Greek foreign policy towards Turkey during the years before 1982, see *The Economist*, 3 July 1982, pp.7-8.

21. *Supra*, pp.141-146.

22. Article 56 (2), Vienna Convention on the Law of Treaties; Elias, 1974, pp.106-107; Sinclair, 1984, pp.187-188.

terminate period: "the two countries...have agreed to create a propitious atmosphere and to refrain from acts and declarations which might lead to polemics".²³ If, by saying "acts," the Turkish side meant any exploitation activity on the disputed continental shelf, the Greek side was undoubtedly referring to violations of Greek airspace by Turkish jets which had been a common practice for years.

In October 1982, the foreign ministers of the two countries met in Ottawa and decided to extend that truce. But, not long before another meeting of the Greek and Turkish foreign ministers was due to take place in Brussels in November, the moratorium came to an abrupt end. The Greek government complained that, following the cancellation of a NATO exercise over the island of Lemnos, Turkish jets had violated Greek airspace over the Aegean Sea no less than 23 times on 22 and 23 November.²⁴ Because of the violations, the ministerial rendezvous was promptly called off and Papandreou explained that, if the Turks wanted another meeting, there would first have to be another long truce.

After the end of the moratorium, and for several years, the airspace of the Aegean became the focus of conflict between Greece and Turkey. Turkey frequently violated the air traffic rules as military aircraft entered the Athens FIR area and Greek national airspace with no prior warning and without submitting flight plans. Greece regularly filed diplomatic protests regarding these violations with Turkey and NATO. An example of this situation is an episode during the NATO exercise "Display Determination '84" in the Aegean. Turkey misinterpreted a NATO directive and extended its control within the Athens FIR. This action resulted in the closing of an air lane in the Aegean for 22 hours, which was condemned by both Greece and NATO.²⁵

During this period, the two countries were involved in a propaganda war. The Greek government tried to trade on the negative impression created in Western Europe by the Turkish military government. Turkey, on the other hand, wanted to impress the U.S. by using the rhetorical opposition of Papandreou's government to the NATO alliance and the EEC. The reason for this attitude seems to have been the fact that the so-called Aegean dispute was comprised of two different categories of issues. In the first category, there were is-

23. Oral press release of Yannis Kapsis, deputy minister of foreign affairs, and Fahri Alacam, Turkish ambassador in Athens, 22 July 1982.

24. *The Economist*, 11 December 1982.

25. For more details of this incident, see Rozakis, in *Yearbook 1989*, ELIAMEP, p.227; see also *Manoeuvres de l'OTAN: impacts politiques*.

sues which involved only the two countries, such as the delimitation of the continental shelf, the territorial sea and the militarization status of the Aegean islands. The second category comprised multinational issues, such as the limits of the Athens FIR and NATO operational responsibilities within its south-eastern flank. Whereas the first category of problems seemed static, the second category, especially with regard to NATO responsibilities, was an issue yet to be resolved. Both countries were trying to attract the sympathy of the West.

The Cyprus problem also seriously affected the Greek-Turkish dialogue. The foreign ministers of the two countries had met twice in Strasbourg in April 1983 and in Paris in June of the same year. They decided to start bilateral talks at a high diplomatic level, and these took place between 26 and 28 July 1983. However, diplomatic relations between the two countries were almost broken off when the Turkish-Cypriot leader, Rauf Denktash, unilaterally declared the independence of the Turkish-occupied northern part of Cyprus on 15 November 1983.²⁶ Some months before, Denktash sent a letter to the U.N. secretary general informing him that the extension of Cypriot territorial waters in 1964 to twelve miles was a unilateral action of the "Greek Cypriot administration" and therefore not binding upon the Turkish-Cypriot community.²⁷

The Greek government stated that it was impossible to have a new round of talks until all Turkish troops were removed from Cyprus and all the Turkish provocative acts ceased. There are some indications which reveal that before the UDI, Greece had proposed to Turkey a common statement-declaration in which both countries would declare *inter alia* that they recognised and respected the *status quo* in the Aegean.²⁸ According to Yannis Kapsis, this proposal was accepted by Turkish Ambassador Fahri Alacam on 27 September 1983,²⁹ but it was overtaken by the developments in the Cyprus crisis.

After that date, the talks between the two countries stopped. A cold war atmosphere increased the tension in the region and the two countries were

26. Meinardus, *EA*, 1984, pp.297-306; Alasya, *TDAD*, 1984, pp.77-101.

27. See Official Records of the Security Council, 38th Year, Supplement, 8 February 1983, Doc.S/15603.

28. Note of the Greek Ministry of Foreign Affairs to the Prime Minister, 13 September 1983.

29. Kapsis, 1990, pp.197-198.

locked for several years in sporadic diplomatic conflict. On 9 March 1984, the Greek destroyer *Panther*, while sailing in Greek territorial waters in the northern Aegean and observing Turkish naval exercises, came under fire.³⁰ Greek forces were placed on alert and the Greek ambassador in Ankara was recalled for consultation. In December 1984, the Turkish government lodged a vigorous protest with the Greek government in response to the principles of the New Defense Concept of the Greek Army.³¹ According to this concept, the main threat to Greece came from Turkey and not from the countries of the Warsaw Pact.³²

In October 1985, the Turkish press started a campaign for an official ban on vessels under Greek or Cypriot flag in Turkish ports. In December 1986, an exchange of fire on the land frontier in Thrace killed two Turkish soldiers and one Greek, while another Greek soldier was seriously injured.³³ In January 1987, an economic protocol was signed between Turkey and the part of Cyprus occupied by the Turkish army, which intensified the connection between them.³⁴

From 1981 to 1986, Greek foreign policy towards Turkey underwent change in a significant area, that of bilateral negotiations. Papandreou considered that a dialogue with Turkey would represent a negotiating-away of Greece's sovereign rights in the Aegean, as he believed had happened in the past with his right-wing predecessors.³⁵ Thus, he objected to any idea of dialogue because his basic policy was that negotiations with Turkey were pointless since there was nothing to negotiate.³⁶ Beyond territorial waters, there existed only high seas as prescribed by international law. Since neither of the two countries advanced any claims to the high seas, there was nothing left to negotiate except Greece's sovereign rights.³⁷ This approach was undoubtedly

30. See the Athens newspapers *Kathimerini*, *Eleftherotypia*, 10, 11 and 12 March 1984.

31. See *Cumhuriyet* (Istanbul newspaper), 18 to 23 December 1984. See also Clogg, 1992, p. 191.

32. See in general Coufoudakis, V., and Valinakis, Y., *The International Spectator*, 1987.

33. See *Kathimerini* (Athens newspaper), 20 December 1986.

34. "The Economic Protocol signed between the Turkish Republic of Northern Cyprus and Turkey," *Middle East Business and Banking*, February 1987, pp. 10-12.

35. Dipla, 1992, p. 14.

36. Clogg, in *Greek-Turkish Conflict in the 1990's*, 1992, p. 18.

37. *Threat in the Aegean*, p. 6.

shortsighted because it ignored the pressure of a possible armed conflict over these very issues which were "non-negotiable." This possibility was demonstrated by the March crisis of 1987.

Later, Papandreou's approach changed and he said that he would resume dialogue with Turkey only under two conditions. The first was the acceptance by Turkey of Greek rights in the Aegean. The second was the withdrawal of Turkish soldiers from Cyprus.³⁸ In November 1985, a further change took place, and the Greek government adopted a different policy and set out the conditions under which it would resume dialogue with Turkey. The acceptance of the Aegean status quo was the basic condition, which involved *inter alia* the acceptance by Turkey of the fortification of the eastern Aegean islands under the Lausanne, the Montreux and the Paris treaties, as well as under Article 51 of the U.N. Charter which spells out the right of self-defense. Regarding the continental shelf, Greece asked for recognition by Turkey of the right of the islands to have their own continental shelf according to customary international law as had been expressed in Article 1 of the Geneva Convention of 1958 and Article 121 of the LOSC. The delimitation of the Aegean continental shelf should be on a median line according to the Geneva Convention of 1958. If Turkey could not accept this criterion, both countries could appeal to the ICJ. Turkey also had to agree that the territorial waters should be established according to customary international law and Article 3 of the LOSC, and that Greek national airspace extended to ten miles. Finally, the two last conditions were the recognition of Article 16 of the Lausanne Treaty of 1923, according to which Turkey renounced all rights and title outside its frontiers, and the withdrawal of Turkish troops from Cyprus.³⁹

At first sight, it could be argued that, if Turkey accepted these conditions for the dialogue, there was nothing to negotiate about. Nevertheless, it was the first time that Greece was prepared to agree to put on the table almost all the issues which represented the Aegean question. Up to that time, it said either that the only problem between the two countries was the delimitation of the continental shelf or that there was nothing to negotiate. Moreover, the Greek conditions, in fact, implied that the only problem which needed to be resolved was the delimitation of the continental shelf and that this had to be done through recourse to the ICJ. After January 1987, Papandreou changed

38. Constanas, in *Yearbook 1988*, ELIAMEP, pp.98-99.

39. *Kathimerini* (Athens newspaper), 23 December 1986, p.1.

his official stalemate tactic and accepted that there was a legal problem to be solved between the two states, that of the delimitation of the continental shelf of the Aegean.⁴⁰

B. DEVELOPMENTS IN UNCLOS III AND IN THE JURISPRUDENCE CONCERNING DELIMITATION ISSUES

Shortly after the period in which PASOK swept to power in Greece, two significant events took place in the field of the international law of the sea. In February 1982, the ICJ delivered a judgment concerning the delimitation of the continental shelf between Tunisia and Libya, which entailed "a significant restatement of the law of maritime boundary delimitation" as set forth by the 1969 judgment.⁴¹ The period in which the judgment was delivered was crucial. "If there was a time when a judicial clarification of the law would have been useful, this was surely it"⁴² since UNCLOS III was in its final stage, while negotiations over delimitation were in a deadlock. Some months after the judgment, a compromise text on the delimitation of the continental shelf and the EEZ was finally adopted and incorporated into the Law of the Sea Convention.

1. THE TUNISIA-LIBYA CASE

In 1978, Tunisia and Libya, neither of which is a party to the 1958 Geneva Convention on the Continental Shelf, asked the ICJ what the principles and rules of international law were which might be applied for the delimitation of their continental shelves. The dispute arose over significant amounts of hydrocarbon which were discovered in 1964 in the sea-bed between the two countries. The Court was requested to make this decision in accordance with the "equitable principles and the relevant circumstances which characterise the area, as well as the new accepted trends" in UNCLOS III.⁴³ As with

40. See statement made by the prime minister in the parliament on 3 January 1987; *Kathimerini* (Athens newspaper), 6 March 1987.

41. Feldman, *AJIL*, 1983, p.219.

42. Brown, *MP*, 1983, p.142.

43. Special agreement between Tunisia and Libya, in the *Case Concerning the Continental Shelf*, (Tunisia/Libyan Arab Jamahiriya), *ICJ Reports*, 1982, hereafter cited as *Tunisia-Libya*. On the request of the agreement, see Calfisch, in *Traité du Nouveau Droit de la mer*, 1985, pp.401-403.

the *Anglo-French* arbitration, only the elements of the judgment which can be related to the *Aegean Sea* case, either as general rules of delimitation or as Court practice will be examined.

(a) *The Natural Prolongation Concept*

After the reappearance of the natural prolongation concept in the *North Sea* case, arguments derived from this concept were used extensively by Turkey. The basic Turkish position, which has been presented in meetings of experts between the two countries,⁴⁴ was that the Aegean sea-bed and the Anatolian peninsula belong to the same "alpine geosyncline."⁴⁵ According to Turkey, it is for this reason that the Aegean sea-bed formed the natural prolongation of Asia Minor. Greece, which preferred to use arguments derived from the Geneva Convention of 1958 and to ignore the natural prolongation concept, simply answered that the Aegean sea-bed and the Greek mainland lie over the same tectonic plate, whereas Turkey lies over another tectonic plate.⁴⁶ The problem of the nature of the natural prolongation concept had, up to that period, a certain importance for the Aegean dispute.

In the *Tunisia-Libya* case, both parties agreed that the governing principle of delimitation should be natural prolongation. Nevertheless, they were in disagreement over two issues concerning this concept. In the opinion of Libya, a delimitation which gives effect to natural prolongation is *ipso facto* one "which respects the inherent *ipso jure* rights of each State, and the assertion of such rights is in accordance with equitable principles."⁴⁷ Tunisia believed that simple scientific data was not sufficient to establish such a close relation between equity and geological natural prolongation and that the "satisfying of equitable principles in a particular geographical situation is part of the process of the identification of the natural prolongation."⁴⁸ The second issue of disagreement was the scientific data over the natural prolongation. Whereas Tunisia relied exclusively on geological criteria, Libya took the view that natural prolongation is to be determined solely on the basis of geomorphological criteria.

44. *Aegean Sea Pleadings*, p.169.

45. See also Ozgul and Arpat, 1973, in *Commission Internationale pour l'exploration Scientifique de la mer Méditerranée*, 1973, pp.153-156.

46. See analysis of Stavrinos, 1986, pp.63-82.

47. *Tunisia-Libya*, §39.

48. *Idem*.

Concerning the first issue, the Court rejected natural prolongation as a principle of delimitation law since it was not "sufficient, or even appropriate, in itself to determine the precise extent of the rights of one State in relation to those of a neighbouring State."⁴⁹ The satisfaction of the equitable principles and the identification of natural prolongation "are not to be placed on a plane of equality."⁵⁰ However, the Court accepted the natural prolongation as the basis of legal title.⁵¹ It concluded that the two countries derived title over the continental shelf "from a natural prolongation common to both territories" and that "the ascertainment of the extent of the areas of shelf appertaining to each State must be governed by criteria of international law other than those taken from physical features."⁵²

On the basis of these comments, it could be said that the Court clarified the doctrine of natural prolongation as established by the 1969 judgment. The findings of the Court in connection with the geological and geomorphological views of the parties departed from the *North Sea* cases and followed to a large extent the 1977 Court of Arbitration.⁵³ The hundreds of pages written by oceanographers and geologists trying to prove that their data was more convincing than that of their opponents, the contradictory arguments, the conflicting scientific evidence of a speculative character, and the theories which were described as essays "in geopoetry"⁵⁴ made the Court reject *en bloc* these arguments together with the theory of the existence of any natural submarine boundaries. As was said, "never have so many words been written or spoken to such little effect."⁵⁵

The Court pointed out that the area of delimitation constituted a single continental shelf as the natural prolongation of the territory of both parties and thus "no criterion of delimitation of shelf areas can be derived from the principle of natural prolongation as such."⁵⁶ The coincidence of the natural prolongations of two states over a single continental shelf, a situation which exists in most of the delimitation disputes as well as the Aegean Sea, could not offer any help for the determination of the areas appurtenant to each

49. Ibid., §43.

50. Ibid., §44;

51. Tanja, 1990, p.188.

52. *Tunisia-Libya*, §67.

53. Feldman, *AJIL*, 1983, p.226.

54. *Tunisia-Libya*, Sep.Opinion Jimenez de Arechaga, §38.

55. Brown, *MP*, 1983, p.146.

56. *Tunisia-Libya*, §133.

state.⁵⁷ The delimitation has to be made by reference to criteria of international law and not physical features.⁵⁸

Thus, the rhetorical question asked by the Court, "whether a natural prolongation defined scientifically without reference to equitable principles is truly a 'natural prolongation' for the purpose of delimitation," has been answered.⁵⁹ The "legal concept [of natural prolongation] while it derived from natural phenomenon it nevertheless pursued its own development."⁶⁰

(b) *The Principle of Non-Encroachment and Security*

"Natural prolongation" and "non-encroachment" were used as two correlative concepts in the *North Sea* cases.⁶¹ In the *Tunisia-Libya* case, Libya understood non-encroachment as meaning that "coastal States will not tolerate a sea-bed area immediately in front of their coasts being used by a foreign power."⁶² Tunisia accused Libya of systematically misinterpreting the concept of non-encroachment by using the expression "encroachment of the shelf in front of the Libyan coasts, as synonymous with encroachment on the natural prolongation of Libya's land territory."⁶³

The way that Libya interpreted the principle of non-encroachment can be connected with two events. The first is the Truman proclamation which invoked in its preamble the need for self-protection which "compels the coastal nation to keep close watch over the activities off its shores which are of their nature necessary for the utilization of these resources." The second event is the unanimous rejection of a German proposal in UNCLOS I concerning the freedom of anyone to explore and exploit the subsoil of the sea outside the territorial sea.⁶⁴ Since these issues are directly related with the security of a state and since security is a basic problem in the Aegean Sea, specific attention needs to be given to this connection between natural prolongation, non-encroachment and security.

57. See also Peters, and Tanja, Report, Netherlands Branch of ILA, 1984.

58. Christie, *Geor.JICL*, 1983, p.12.

59. *Tunisia-Libya*, §39.

60. *Ibid.*, §42; see also Weil, 1989, p.37.

61. *North Sea*, §101(C).

62. *Tunisia-Libya*, Sep.Opinion Jimenez de Arechaga, §67.

63. From the Verbatim Records, cited *ibid.*, §68.

64. UNCLOS I, *Off.Rec.*, Vol.VI, p.129.

The ICJ did not connect these three elements with each other. Nevertheless, Jimenez de Arechaga, in his separate opinion, noticed that, if the Court used the natural prolongation expression to describe "the continuation of the coastal front of every coastal State, and not with a geological or geomorphological meaning, then the 'non-encroachment' in front of and close to the coasts of a State is the correct interpretation of the principle."⁶⁵ According to this approach, the distance factor was connected to the idea of non-encroachment since a certain width of maritime territory is necessary at least for the prevention of exploration and exploitation by third states of the natural resources of a state in front of its coasts.

This interpretation of non-encroachment was connected to the *raison d'être* of the institution of the continental shelf as well as with the

immediate and almost instinctive rejection by all coastal States of the possibility that foreign States, or foreign companies or individuals, might appear in front of their coasts, outside the territorial sea but at a short distance from their ports and coastal defences, in order to exploit the sea-bed and erect fixed installations for this purpose.⁶⁶

While it is very difficult to argue with this passage, it is equally difficult to see how this situation can be avoided in the Aegean Sea where the distances between the coasts of the Greek eastern Aegean islands and the Turkish mainland are so limited.

(c) *Recent Developments in UNCLOS III*

The Court also turned to the new accepted trends in UNCLOS III. As mentioned, it would have turned to these developments in any case even if the parties had not alluded to it in their agreement. These provisions could not be ignored if the ICJ came to the conclusion that their content embodies or crystallizes rules of customary international law.⁶⁷ For the same reason, these conclusions were directly relevant to the Aegean Sea conflict since, if the trends in UNCLOS III represented rules of customary international law, they could be applied between Greece and Turkey as well.

The definition of the continental shelf which was contained in Article 76(1) of the Draft Convention referred to natural prolongation as well as to

65. *Tunisia-Libya*, Sep. Opinion Jimenez de Arechaga, §69.

66. *Ibid.*, §72.

67. *Tunisia-Libya*, §24.

the distance from the coast. The ICJ considered natural prolongation as the "main criterion," while it accepted that the distance from the coasts was the basis for the title only "in certain circumstances".⁶⁸ The Court repeated the view that no criteria for the delimitation were provided, in spite of the fact that natural prolongation is a basis for the legal title over the continental shelf. Article 76(1) did not introduce any "new elements and does not therefore call for further consideration."⁶⁹

However, this finding concerned only the principle of natural prolongation. The distance from the baseline, which departed from "the principle that natural prolongation is the sole basis of the title," could have consequences for the claims of the parties. Despite the acceptance in principle of the distance from the coast as a basis for the title over the continental shelf, the ICJ did not take it into account because, as it explained, the two parties had based themselves exclusively on the natural prolongation and had not argued the distance principle at all.⁷⁰ In any case, the first step towards the "distance criterion" was made.

The Court then proceeded to examine Draft Article 83 which contained the controversial formula which was achieved at the Tenth Session of UNCLOS III after the interventions of the president of the Conference.⁷¹ Despite its promises to investigate the progress made in the Conference,⁷² the ICJ simply concluded that the compromise formula did not offer any guidance "to the interested States in their effort to achieve an equitable solution." Any indication or specific criterion was excluded from the article and emphasis was placed simply on the equitable solution to be achieved.⁷³

68. *Ibid.*, §47.

69. *Ibid.*, §48; see also Stein, *ASIL Proc.*, 1982, pp.161-165; but Oda thought that after the introduction of the 200-mile criterion in Draft Article 76, natural prolongation had lost its significance in areas extending less than 200 miles, *Tunisia-Libya*, Diss.Opinion, §107.

70. *Tunisia-Libya*, §48; but see Sep.Opinion Jimenez de Arechaga, §50-56, 73; Diss.Opinion Oda, §107, 129-130, 160.

71. *Supra*, p.166.

72. See *Tunisia-Libya*, Diss.Opinion Oda, §26; Sep.Opinion Jimenez de Arechaga, §32; Tanja asks if, by avoiding this investigation, the Court could never be accused of taking sides or jeopardizing the issue, 1990, p.189; on the same, see also Weil, 1989, p.37.

73. *Tunisia-Libya*, §50; see also Malloy, that the influence of UNCLOS III on the decision is ambiguous due to the inherent ambiguity of the accepted trends, *Th.Ac.* 1985, p.385

(d) *Equitable Principles*

The Court then turned to identify how this equitable solution could be achieved. The approach was not very elucidating. The ICJ explained that it would apply equitable principles and balance all the relevant considerations in a case in order to reach an equitable result.⁷⁴ The idea was very simple. A result is equitable if it has been achieved through equitable principles and the equitable principles are those which can lead to an equitable result. The peculiarity of this definition was recognized by the Court when it noted that the terminology is not entirely satisfactory "because it employs the term equitable to characterise both the result to be achieved and the means to be applied to reach this result."⁷⁵

According to the Court, under this approach the next step is the identification of the content of the equitable principles. However, the ICJ preferred some general statements that showed the relation between equity and law but did not clarify the issue.

Equity as a legal concept is a direct emanation of the idea of justice(...) The legal concept of equity is a general principle directly applicable as law. Moreover, when applying positive international law, a court may choose among several possible interpretations of the law the one which appears in the light of the circumstances of the case, to be closest to the requirements of justice.⁷⁶

The Court also stated that "it is the result which is predominant; the principles are subordinated to the goal."⁷⁷ It said that the process of applying equity is not an exercise of discretion or conciliation or an operation of distributive justice, and very carefully pointed out that it is not a decision *ex aequo et bono* either. "What it [equity] is, is less clear."⁷⁸ The Court's reluctance to define equitable principles was probably one of the most controversial

74. *Tunisia-Libya*, §71.

75. *Ibid.*, §70.

76. *Ibid.*, §71; Tanja, 1990, describes these passages as "cryptic," p.192.

77. *Tunisia-Libya*, §70; But Tanja: "Are the principles *a priori* subordinated to the goal or are the principles...in themselves inequitable, but are transformed to equitable...once it has been determined what the equitable solution should be?," 1990, p.194.

78. Brown, *MP*, 1983, p.149; Zoller, "qu'est-ce qu'un principe équitable? Nul n'a jamais pu en donner une définition. En revanche, on en donne des exemples," *RGDIP*, 1982, p.668.

aspects of the 1982 judgment. It has been criticized by three judges⁷⁹ and several commentators. It has been described as deepening the uncertainty in delimitation law⁸⁰ and as creating a situation which is very hard to distinguish from a decision *ex aequo et bono*.⁸¹ This situation could result "*à une jurisprudence constante quant à la formulation des règles, mais très vacillante quant à l'application de ses règles dans un cas d'espèce*."⁸² It was a result-oriented approach where the process was named after the product.⁸³

Many questions can be posed in relation to the Court's approach to equitable principles. The exercise, however, falls outside the scope of this study. What is more important to say is that the Court, after having explained its ideas about the equitable principles, mentioned that "what is reasonable and equitable in any given case must depend on its particular circumstances."⁸⁴

(e) *Relevant Circumstances*

Thus, the next step of the Court was the identification of the relevant circumstances of the case. As was explained, "each continental shelf case in dispute should be considered and judged on its own merits, having regard to its peculiar circumstances."⁸⁵ The Court identified the following categories of relevant circumstances: the geographical and geomorphological circumstances, the "alleged maritime limits," the historic rights, the economic circumstances, proportionality and the existence of islands. Only some of these relevant circumstances might be considered to exist in the Aegean Sea.

Although the Court rejected the geomorphological arguments advanced by Tunisia in relation to natural prolongation, it accepted, however, that certain geomorphological features, separated from the natural prolongation, may constitute relevant circumstances. The only feature of "substantial relevance" in the area was the "Tripolitanian Furrow." The Court, following the *Anglo-French* arbitration concerning the Hurd Deep Fault and the Hurd Deep Fault Zone, pointed out that the Furrow's presence in the delimitation area did not disrupt the unity of the continental shelf "so as to justify a delimitation on the

79. *Tunisia-Libya* Diss. Opinion Gros, §19; Diss. Opinion Oda, §155-156; Diss. Opinion Evensen, §14-15, p.319.

80. Charney, *ASIL Proc.*, 1982, p.155ff.

81. Brown, *MP*, 1983, p. 150; Weil, 1989, p.165

82. Dipla, 1984, p. 212.

83. Charney, *AJIL*, 1984, pp.593-594.

84. *Tunisia-Libya*, §72.

85. *Idem*, §78.

basis of its identification as the division between areas of natural prolongation."⁸⁶

More important, however, was the identification of the coast of the parties which was relevant for the delimitation. The Court did not take into account the whole of the coasts of the two countries but narrowed the relevant area to where the extension of the coasts of the two states under the sea would result in an overlapping between them. The "geographic correlation between coast and submerged areas off the coast is the basis of the coastal State's legal right"⁸⁷ and "the coast of each party is the starting point for every delimitation."⁸⁸ The change of direction of the Tunisian coast, which was considered as modifying the situation of lateral adjacency between two states in a position of opposite states, was also thought to be very important.⁸⁹

Related to the identification of the coasts were the calculations of proportionality between the areas of continental shelf to be attributed to a state and the relevant coastal front to be calculated. The ICJ, in fact, rejected the 1978 Arbitral Award approach to proportionality. It expressed the view that proportionality is "required by the fundamental principle of ensuring an equitable delimitation between the States concerned."⁹⁰ In justifying the use of the proportionality test, the Court explained that one must compare like with like.⁹¹

Historic rights concerning sedentary fisheries that Tunisians had exercised from time immemorial were recognized in principle as providing a possible example of relevant circumstances. In the *Tunisia-Libya* case, however, they were not examined because "other circumstances" were more relevant to the case.⁹² The same approach was followed in relation to the economic factors in the area and especially the existence of oil wells which were

86. *Idem*, §80; however, the ICJ considered that the Furrow was more important beyond the delimitation area in the direction of Malta, a fact which was not taken into consideration at all in the *Libya/Malta* case, Evans, 1989, pp.51, 106.

87. *Tunisia-Libya*, §73.

88. *Ibid.*, §74.

89. *Ibid.*, §78.

90. *Ibid.*, §103.

91. *Ibid.*, §130.

92. *Ibid.*, §101, 105.

regarded "as an element to be taken into account in the process of weighing all relevant factors to achieve an equitable result."⁹³

Finally, the islands in the delimitation area were considered as "a circumstance which clearly calls for consideration." These islands included Jerba and the Kerkennah islands, as well as their surrounding islets and low-tide elevations. The opinion of the Court was not very clear. In paragraph 79 of the judgment, the Court found that these islands could not be excluded in principle from a delimitation process. Nevertheless, in the same paragraph the situation changed. The presence of the Kerkennah islands was considered as highly material. Jerba was considered simply as relevant to the delimitation, while "other considerations...prevail over the effect of its presence."⁹⁴

The presence of islands has a very important bearing on the question of whether one state or the other is favored by nature as regards its coastline. This question can be related to the Aegean Sea where Greece is more favored by nature because of the presence of thousands of Greek islands. The Court reiterated the view that was expressed in the 1969 judgment, although in a completely different geographical context. The argument was rejected on the basis that, even if the Court were to accept "the idea of natural advantages or disadvantages," such natural inequalities could not be remedied by equity.⁹⁵

(f) *The Practical Method and the Existence of Islands*

Before clarifying how the principles and rules it had examined were to be applied in practice, the Court referred to the equidistance method. At this point, it should be mentioned that, unlike the *Aegean Sea* case, this was not a case for one party advocating equidistance and the other pointing out its inequity. Both parties were in agreement that the equidistance method should be discarded. The ICJ reaffirmed the position it had expressed in 1969, namely, that this method was not a mandatory rule of law, that it did not have some privileged legal status and that it did not necessarily lead to an equitable result.⁹⁶

The area of delimitation was divided into two segments because, in the view of the Court, the relevant circumstances which characterized the area

93. Ibid., §107; see also *North Sea*, §106-107.

94. *Tunisia-Libya*, §79; see also *Tunisia-Libya*, Diss.Opinion Evensen, §17; Hodgson, *CaseW.Res.J.Int.L.*, 1984, p.27.

95. *Tunisia-Libya*, §79; see also *North Sea*, §91.

96. *Tunisia-Libya*, §109; see also Brown, *MP*, 1983, pp.154-155.

"call for the area close to the coasts of the Parties to be treated differently from the areas further offshore."⁹⁷ The first segment of the boundary was a line perpendicular to the coast, which had been accepted by the conduct of the parties in the past.⁹⁸ The second segment was determined by the geography of the area. The radical change in the general direction of the Tunisian coastline was the most evident geographical feature.⁹⁹ The Court, after indicating where the point at which the change in direction occurred,¹⁰⁰ turned to the construction of the delimitation line. The equidistance line was again rejected in this second sector "apparently because of the effects of the islands off the Tunisian coasts."¹⁰¹ The Court considered that a straight line segment would produce a "reasonable and equitable result."¹⁰² It also found that a delimitation line running parallel to the seaward coast of the Kerkennah islands gave excessive weight to them. Thus, following the example of the *Anglo-French* arbitration, it accorded only partial effect to the islands. It prescribed that a line should be drawn as a bisector of the angle formed by two other lines, the one following the general direction of the Tunisian coast and the other taking account of the islands only. Then another line parallel to the bisector of the angle was drawn, which started from the last point of the first segment. Thus, the Kerkennah islands and the low-tide elevations around them were given half effect.¹⁰³

The Court verified the equitable character of the boundary by applying the test of proportionality. Because this test requires a particular geographical relationship between the coasts of the parties, the Court had to define first the "relevant coasts" whose extensions overlap and converge in the "relevant delimitation area." This "identification" of the relevant coast was made in a negative way after excluding all those parts of a state's coast which have no "relationship with the coasts of the other party" and whose seaward extensions

97. *Tunisia-Libya*, §114; but see Zoller, E., "sont-ce les circonstances qui justifient le partage en deux secteurs ou est-ce la nécessité d'aboutir à un résultat équitable? Si cette dernière interprétation est fondée, à quoi alors servent les circonstances?" *RGDIP*, 1982, p. 660.

98. *Tunisia-Libya*, §114-121.

99. *Ibid.*, §122.

100. *Ibid.*, §124; see also controversy about this in *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the case concerning the Continental Shelf*, ICJ Reports, 1985.

101. Christie, *Geor.JICL*, 1983, p.20.

102. *Tunisia-Libya*, §127.

103. *Ibid.*, §129.

do not overlap.¹⁰⁴ This "overlap" criterion was not related to the rights or claims of the two parties, but was based purely on the geographical relation of the two coasts and of the delimitation area.¹⁰⁵ The ICJ by "a rather unusual construction" of "cartographical convenience" defined the area and proceeded to apply the proportionality test. The discrepancy between the ratio of the lengths of the coastlines of the two states (1:1.94) and of the ratio of the respective areas of continental shelf (1:1.5) was found to stand in approximately the same proportion.¹⁰⁶ Thus, the result was found to meet the requirements of the test of proportionality as an aspect of equity.

(g) *Some Weak Points in Relation to Islands*

Because of the presence of the Kerkennah islands in the second segment of the delimitation area, the Court's method has a particular interest for the Aegean Sea. First of all, it is an indisputable fact that the change in direction of the Tunisian coast is a very important geographical factor. According to the Court, geography is the starting line of any boundary delimitation. In the process to achieve an equitable result, the coasts of both states are involved because it is their relationship which must be taken into account for an equitable result. What is the meaning then of an equitable result? When the ICJ came to the drawing of the boundary line, the maritime area of Tunisia was diminished simply by reference to substantial Tunisian geographical features, namely, the Kerkennah islands lying only eleven miles from the coasts, whose presence was considered as abnormal. At first sight, it is the same technique which was used in the *Anglo-French* arbitration.

There is, however, a substantial difference between these two cases. In the *Anglo-French* arbitration, the Court viewed the further projection of the Scilly islands, superseded to the greater projection of Cornwall, as producing an inequitable effect. The difference lies in the fact that the Court was using the equidistance method which has the characteristic of reflecting all the sinuities of the coast. In this context, the Scilly islands were considered as special circumstances.

In the *Tunisia-Libya* case, the ICJ did not use equidistance. It stressed first, as the previous Courts have done, that there is no rule of international law prescribing the application of the equidistance method. Then it used the

104. *Ibid.*, §75.

105. Jeanicke, in *Realism in Law-Making*, 1986, p.58.

106. *Tunisia-Libya*, §131.

straight line which was adopted for the boundary in the first sector, "though at a different angle,"¹⁰⁷ a line "which does not exemplify any principle or rule of international law"¹⁰⁸ and which was derived "*ex nihilo*."¹⁰⁹ By referring to this line and not to an equidistance line, the Court drew a parallel boundary for the second segment which gave only half effect or half angle to the islands situated near the coast. The Kerkennah islands were considered as having *per se* excessive weight on the delimitation line. If this method had been followed in 1977, "France would have gained considerably."¹¹⁰ The Court, despite its view that equity cannot remedy natural inequalities,¹¹¹ did just the opposite. As Judge Gros pointed out,

a court of justice does not modify a delimitation because it finds subjectively that it is less advantageous to one party than to the other, for this would be to embark upon the vain task of equalising the facts of nature¹¹²

only giving half effect to the Kerkennah archipelago is...a refashioning of nature which is neither warranted in law nor by the facts, nor is the disregard of such important features equitable.¹¹³

Thus, under the specific circumstances it can be said that either Tunisia was punished for having these geographical features or Libya got a reward because nature was not so generous to it.¹¹⁴

A second point is the Kerkennah islands themselves. They are substantial islands, they consist of two main islands and they have a total area of 180 sq. km., almost the size of Malta. The fact that they are separated by an area of shoals less than twelve miles wide does not mean that they "are abnormal geographical features."¹¹⁵ The Court did not explain why a line taking the islands into account would give excessive weight to them.¹¹⁶ On the contrary, these islands are true islands and fulfill the requirements of an island as they

107. *Ibid.*, §127.

108. *Tunisia-Libya*, Diss.Opinion Oda, §180.

109. *Tunisia-Libya*, Diss.Opinion Gros, §14.

110. *Libya/Malta*, Diss.Opinion Oda, §73.

111. *Supra*, pp.182-183.

112. *Tunisia-Libya*, Diss.Opinion Gros, §13.

113. *Tunisia-Libya*, Diss.Opinion Evensen, §17.

114. See also Herman, *ICLQ*, 1984, pp.831-834.

115. *Tunisia-Libya*, Diss.Opinion Gros, §14.

116. See *Tunisia-Libya*, Diss.Opinion Evensen, §19.

were laid down in the Geneva Convention on the Territorial Sea and in Article 121 of the then Draft Convention.¹¹⁷

The treatment of Jerba was even more radical than the treatment of the Kerkennah islands. Despite its size, which is twice that of Malta,¹¹⁸ and despite its population, it was entirely disregarded in establishing the general direction of the coast.

Finally, it is unknown if, in the mathematical calculations of proportionality, the coastlines of the Kerkennah archipelago and of Jerba island were included. It seems likely that, at least, the coasts of the Kerkennah islands were not.¹¹⁹

(h) *An Overview*

The importance of the *Tunisia-Libya* judgment for the Greek-Turkish conflict over the Aegean continental shelf lies in the fact that it tries to identify the meaning of relevant circumstances within a context of equitable principles. It is also an important case for the discounting or disregarding of islands. The Court went further in this decision than did the *Anglo-French* arbitration since the islands in this specific case were not only substantial in scale and population but, moreover, they were on the "right side" of the median line and in very close proximity to the mainland.

The Court failed to explain the meaning of equitable principles despite the fact that it was confirmed that equity is a *conditio sine qua non* for delimitations. Moreover, the application of the proportionality test in a mathematical formula which was much stricter than in the *North Sea* cases or the *Anglo-French* arbitration elevated into almost a principle of international law.¹²⁰ One element that was confirmed by the ICJ was the important role that is always played by the geography of the areas concerned in the drawing of maritime boundaries.

From a more general viewpoint, it can be said that the *Tunisia-Libya* case and the two previous judgments have one common characteristic. In every single case, there is a particular emphasis on the view that equidistance is not a rule in international law, that there does not exist any rule in

117. Hodgson, *Case W. Res. J. Int. L.*, 1984, p. 29.

118. *Tunisia-Libya*, Diss. Opinion Evensen, §17.

119. Evensen, in *The New Law of the Sea*, 1983, p. 135.

120. *Tunisia-Libya*, Diss. Opinion Evensen, §23.

customary law which prescribes the obligatory application of equidistance, or, in other words, that equidistance is just one method among others.

This approach towards equidistance is probably reflected every time the Court takes pains to emphasize that its decision is not a decision *ex aequo et bono*. Both in the *North Sea* and the *Tunisia-Libya* cases, the ICJ mentioned that "there is...no question...of any decision *ex aequo et bono*"¹²¹ and that "the application of equitable principles is to be distinguished from a decision *ex aequo et bono*."¹²² The answer to the question of why the Court keeps emphasizing that its decision is not *ex aequo et bono*, despite the fact that in neither of the two cases have the parties asked the ICJ to decide *ex aequo et bono*," is probably found in the *Tunisia-Libya* judgment. The judgment is the very application of equitable principles.¹²³ As has been mentioned, "the distinction between equitable principles *infra legem* and considerations *ex aequo et bono* has unfortunately been blurred by its pronouncements."¹²⁴ The lack of any equitable method and the rejection of the qualified equidistance method as equitable *par excellence*¹²⁵ leads the Courts to start with other methods whose application leads to the question: Is this a decision according to rules of law and, if so, what are these rules of law?

Finally, this decision is also important for the discounting or disregarding of islands. Although the presence of islands may influence the equity of a delimitation, their treatment varied in the last delimitation cases. In the *Anglo-French* arbitration, an enclave solution was preferred for the Channel islands and half effect was given to the Scilly islands. The 1981 award of the *Sharjah-Dubai Continental Shelf* arbitration gave the island of Abu Musa, which was located on the "right side" of the median line, a twelve mile territorial sea while it was disregarded in the drawing of the main equidistance line.¹²⁶ The *Tunisia-Libya* case went even further than did the *Anglo-French* arbitration. The islands in this specific case were not only substantial in scale and population but, moreover, they were on the "right side" of the median line and in very close proximity to the mainland. The varying treatment of islands in all these cases offered encouragement to Turkey to proceed further with its arguments since it was clear that, contrary to the pronouncement of

121. *North Sea*, §88.

122. *Tunisia-Libya*, §71.

123. Brown, 1983, p.161.

124. Hodgson, *Case W. Res. J. Int. L.*, 1984, p.36.

125. *Tunisia-Libya*, Diss. Opinion Oda, §181.

126. *Dubai-Sharjah Border Arbitration*, 19 October 1981, ILR, 91, pp.543-699.

Greece and the 1958 Geneva Convention, there was no established rule in practice for the general treatment of islands.

2. THE END OF UNCLOS III: THE NEW PROBLEMS

After nine years of negotiations, the final decision-making session of UNCLOS III started in New York in 1982, some months after the *Tunisia-Libya* case. The compromise formula which was achieved in the previous session was seriously tested after Turkey and Venezuela sought to ensure that the Convention allowed the making of reservations to some articles of the Convention. Turkey wanted to delete completely Article 309 of the Convention¹²⁷ according to which "no reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention." Turkish concerns related mainly to the articles of the delimitation of the territorial sea, continental shelf and EEZ, as well as the article concerning the regime of islands.¹²⁸ Greece, on the other hand, was opposed to any reservations on the grounds that "provisions of such importance should not be deprived of their effectiveness either through amendments or through the formulation of reservations."¹²⁹ It is clear that behind this Greek view there were hidden fears that, if reservations were to be allowed, Turkey could vote for a Convention which could be later "tailored" to its needs. The Turkish proposals were rejected and the text of the Draft Convention became the Law of the Sea Convention. The Convention was adopted by 130 votes in favor to 4 against, while 17 states abstained. The 4 votes against included Turkey and the U.S.¹³⁰ It seemed that Turkey, having participated in the Conference and having decided to claim that it was not bound by any of the provisions of the new Convention, tried to make as evident as possible its rejection of the final text.

The Convention, "which bears all the signs and scars of nine years of multilateral negotiation,"¹³¹ was opened for signature at Montego Bay in Jamaica in December 1982. All the states which participated in UNCLOS III found the opportunity to put on record their interpretation of various articles

127. U.N. Doc.A/Conf.62/L.120, UNCLOS III, *Off.Rec.*, XVI, p.133; see also Turkish statement, 17 April 1982, Platzöder, XII, pp.529-530; also Platzöder, XVI, p.31.

128. UNCLOS III, *Off.Rec.*, XVI, 160th meeting, §11.

129. *Ibid.*, 165th meeting, §110.

130. U.N. Press Release SEA/494 (Round up of Session), 30 April 1982, p.1.

131. Booth, 1985, p.20.

of the Convention. Greece stressed that all the articles of the LOSC had been accepted by near consensus with the exception of Part XI of the sea-bed. It, therefore, considered that all these provisions can already be regarded as part of customary international law.¹³² As for Turkey, its delegate in UNCLOS III explained the reasons why his country voted against the LOSC and did not sign the Final Act of the Conference. His explanations were based entirely on the problems related with the Aegean Sea dispute and they still reflect the official Turkish position in Greek-Turkish relations.¹³³ In general, the Turkish delegate denied that the work of the Conference was conducted by way of consensus. The consensus was questioned on the grounds that Turkey participated in all the work of UNCLOS III and raised objections to a number of articles, without ever giving its consent to provisions which did not accommodate Turkish views.¹³⁴

The reactions of the two countries were not isolated only to general remarks. Their remarks concerned more specific topics such as the territorial sea, the delimitations of the continental shelf and the EEZ and the regime of islands.

(a) The Breadth of the Territorial Sea and Related Topics

The article of the LOSC regarding the territorial sea read as follows:

Article 3. Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

The problem of the breadth of the territorial sea, which was a matter of controversy for many years, was solved by the LOSC with the adoption of a twelve-mile limit "in accordance with the clearly dominant trend in State practice."¹³⁵ Despite the fact that there already existed claims of wider zones than twelve miles¹³⁶ the work of UNCLOS III showed that this limit "*déjà*

132. UNCLOS III, *Off.Rec.*, XVII, 191st meeting, §139.

133. For an analysis of the Turkish views in Montego Bay, see Marsh, in *The Aegean Issues: Problems and Prospects*, 1989, pp.221-237.

134. UNCLOS III, *Off.Rec.*, Vol. XVII, part A., p.76, Statement by Ambassador Coshkun Kirca, §140, (hereinafter cited as *Kirca Statement*).

135. Churchill and Lowe, 1988, p.67.

136. See the flux in the early 1970s concerning claims of 200-mile zones either called territorial seas or economic zones in Oda, Vol. I, 1972, pp.32-36.

acquis un caractère coutumier."¹³⁷ The article concerning the delimitation of the territorial sea was derived from Article 12 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. The problems of the definition of what constitutes special circumstances in the limited area of the territorial sea and in the context of historic rights¹³⁸ remained unanswered.¹³⁹ The contiguous zone was extended under Article 33 to 24 miles and, while its main features were retained, its "residual status is that of the exclusive economic zone."¹⁴⁰

Greece considered that Article 3 reflects the progressive development of international practice and codifies a rule of customary international law. The "enclosed or semi-enclosed" nature of the Aegean Sea is not a factor which could deprive a state from exercising its right to extend its territorial sea to twelve miles. If areas of high seas are enclosed within the territorial waters of a state, there exists the right of innocent passage, whose definition in the LOSC is much more detailed than it was in the previous convention.¹⁴¹

As regards Turkey, its concern was mostly focused on the articles concerning the regime of the territorial sea. It insisted that the twelve miles established by the Convention were simply the maximum breadth that a state could extend its territorial jurisdiction.¹⁴² It pointed out emphatically that the twelve miles were neither compulsory nor a limit to be applied automatically. It also argued that the application of this limit in areas like the Aegean, which are enclosed or semi-enclosed, would constitute an *abuse of right*, since the extension would disregard the special characteristics of these seas and it would deprive the other coastal state from its existing rights and interests.

The invocation of the concept of the abuse of rights was related to Article 300 of the LOSC:

137. Nguyen, Dailler, Pellet, 1992, p.1038.

138. See Knight, 1980, pp.5-82.

139. Chiu, *Md.J.Int'l.LTr*, 1985, pp.6-8.

140. Brown, 1984, I, p.I.3 4; see also Reuter, J.P., in *Mélanges Georges Perrin*, 1984, p.253; Lowe, *BYBIL*, 1981, pp.109-169.

141. Statement of Greek Foreign Minister Karolos Papoulias, Montego Bay, 10 December 1982, *Kathimerini* (Athens newspaper), 24 January 1988; on the extent of innocent passage, see also Rothwell, *MP*, 1992, pp.429-436.

142. Beauchamp agrees that the LOSC "does not establish a specific breadth, although it does stipulate a *maximum* seaward limit of twelve nautical miles," *SDLR*, 1986, p.622.

Article 300. Good faith and abuse of rights

States parties [to LOSC] shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognised in this Convention in a manner which would not constitute an abuse of right.

The reference to good faith in this article "reflects Article 2, paragraph 2, of the U.N. Charter and the fundamental rule *pacta sunt servanda*."¹⁴³ The abuse of rights is a concept recognized in international law despite the fact that there is little international practice on it.¹⁴⁴ From the drafting history of this article,¹⁴⁵ it appears that, despite Turkish arguments, its application is limited to relations between states-parties to the LOSC and "concerns the unnecessary or arbitrary exercise of rights, jurisdiction and freedoms or the misuse of powers by such a State Party."¹⁴⁶

This Article, which was considered by Turkey as a general principle of international law, emerged, according to the Turkish delegate, out "of the necessity to modify rules to suit special circumstances." Thus, on this basis any extension of the territorial sea breadth in areas of enclosed or semi-enclosed seas would constitute an abuse of right.¹⁴⁷

The character of Article 3 as a rule of customary international law was also questioned by Turkey. This view was based on three premises: first, that it is impossible to speak of a rule of customary law in cases where its application constitutes an abuse of right; second, that, during the work of the Conference, Turkey was a persistent objector to the twelve-mile limit and according to international law a state "may contract out of a custom in the process of formation;"¹⁴⁸ and, third, that Turkey persistently refused, through amendments and statements, the application of this limit to enclosed or semi-enclosed seas.¹⁴⁹

143. Nordquist, Vol.V, p.152.

144. *Certain German Interests in Polish Upper Silesia*, (Germany v. Poland) *PCIJ Series A*, No.7, p.30, (1926); *Free Zones case*, (France-Switzerland), *PCIJ Series A/B*, No.46, p.167, (1932).

145. Platzöder, 1987, Vol. XII, pp.297,390-395.

146. Nordquist, Vol.V., p.152; Kiss, in *Encyclopedia of Public International Law*.

147. *Kirca Statement*; §145.

148. *Ibid.*, §148-150.

149. UNCLOS III, *Off.Rec.*, Vol. XVII, part B., Documents, Turkey, 23 February 1983, p.242.

The delimitation of the territorial sea was treated by Turkey in the same way as the delimitation of the continental shelf and the EEZ. The guiding principle was considered to be the principle of equity, while the median line does not have any prominence over other methods and can be applied only if it leads to an equitable result.¹⁵⁰

(b) Straits in the Aegean

The extension of the territorial sea to twelve miles could mean that many straits, through which there was previously a belt of high seas, would become territorial sea straits. Thus, Articles 37 to 44 of the LOSC provide the right of transit passage of civil and military ships and aircraft through and over these straits.¹⁵¹ Greece considered that in such a situation problems of security might be created, especially in the central Aegean where there are numerous straits among the islands. During the final session of UNCLOS III, it presented an amendment which proposed that states bordering straits under their sovereignty could "designate predetermined air routes...for air navigation in straits for the purpose of promoting the safe and efficient passage of aircraft in transit."¹⁵² The proposal was not accepted. Therefore, Greece made a declaration regarding the provisions entitled "Straits Used for International Navigation" of the LOSC:

In areas where there are numerous spread out islands that form a great number of alternative straits which serve in fact one and the same route of international navigation, it is the understanding of the Greek delegation that the coastal State concerned has the responsibility to designate the route or routes, in the said alternative straits, through which ships and aircraft of third countries could pass under the transit passage regime, in such a way that, on the one hand, the requirements of international navigation and overflight are satisfied and, on the other hand, the minimum security requirements of both the ships and aircraft in transit as well as those of the coastal State are fulfilled.¹⁵³

150. *Kirca Statement*, §152-153.

151. See Reisman, *AJIL*, 1980, pp.65-76; Nandan and Anderson, *BYBIL*, 1989, pp.159-198; and *Straits Used for International Navigation*, Vol. I-II; Rozakis, *The Aegean Sea and the New Law of the Sea*, 1996.

152. *A/Conf.62/L.123*, Platzöder, XVI, p.49.

153. See statement by the Greek Delegation, 30 April 1982, UNCLOS III, *Official Records*, Vol. XVI, *A/Conf.62/WS/26*. See also Economides, *AAII*, 1985, p.181; the outcome of the case concerning *Passage through the Great Belt* (Finland v. Denmark) could

This statement was rejected by Turkey which accused Greece of attempting to create a new status for islands and a separate category of straits to be applied especially to the Aegean Sea. Turkey asserted that, after Greece failed to ensure the application of the regime of the archipelagic states to the islands of continental states, Greece's efforts were focused on giving it the right to exercise, by unilateral and arbitrary statements, discretionary powers not only over straits, but also over high seas. With regard to air routes over these straits, the Greek statement was considered as contrary to ICAO rules.¹⁵⁴

(c) *The Continental Shelf and its Delimitation*

The concept of the continental shelf has changed significantly since the Geneva Convention on the Continental Shelf. The new text reads as follows:

Article 76. Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed and sub-soil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental shelf does not extend up to that distance.

Thus, the outer limit of the continental shelf is no longer defined according to the depth of the sea-bed or any vague and undefined exploitability criterion.¹⁵⁵ In the LOSC, the natural prolongation criterion appears in parallel with the 200-mile distance from the coast criterion mainly because of the influence of the concept of the exclusive economic zone.¹⁵⁶ The question of which criterion prevails within the distance of 200 miles from the coasts, natural prolongation or distance, was to be answered by the ICJ in 1985. The

have been relevant where there existed four routes through passages which are available to ship traffic to and from the Baltic, see Order, *ICJ Reports*, 1991, §18; see *infra*, pp.338-340.

154. UNCLOS III, *Off.Rec.*, Vol. XVII, part B., Doc.A/Conf.62/WS/34, p.226; on the coastal state regulating passage within its territorial sea, see the "*Lusitania Espresso*" incident in Rothwell, *MP*, 1992.

155. For the ambiguity of the continental shelf concept, see Oda, 1963, pp.160-172.

156. Oda, in *International Law at the Time of its Codification*, 1987, p.353.

criterion of the outer edge of the continental margin does not apply in the Aegean Sea where the sea-bed is shallow and the distances are limited.¹⁵⁷

A new article also replaced Article 6 of the Geneva Convention concerning the delimitation of the continental shelf.

Article 74/83. Delimitation of the exclusive economic zone/continental shelf between States with opposite or adjacent coasts

1. The delimitation of the exclusive economic zone/continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

As we have seen and as has been pointed out by the ICJ in the *Tunisia-Libya* case, these articles do not mention any specific rules for the delimitation of the continental shelf. According to Article 38, the sources of international law are treaties, customs, general principles of international law, judicial decisions and writers' views. Thus, in a delimitation dispute, the problem of the determination of the rules of law remains unsolved. The reference to the achievement of an "equitable result" was considered in the Conference as irrelevant.¹⁵⁸

However, it is important to note that the two articles concerning the delimitation of the continental shelf and the EEZ are identical in spite of the fact that the two regimes are based on different criteria.¹⁵⁹ This issue, which was to be faced by the ICJ in the *Gulf of Maine* and the *Jan Mayen* cases, undoubtedly creates a lot of problems, especially in a case where overlapping claims to an EEZ and continental shelf coexist.¹⁶⁰

The issues of delimitation were interpreted by Turkey in the light of the *Tunisia-Libya* case.¹⁶¹ Thus, while Articles 74 and 83 were considered as confirming the generally accepted view that the delimitation should be effected by agreement, the reference to the "equitable solution" was interpreted, in ac-

157. For more, see Brown, 1984, pp.1.4 7-18.

158. See the attempt of the Iranian delegate to define the article in Brown, 1984, I.107.

159. On the formation of the EEZ regime and the various proposals, see Castaneda, J., in *Essays in International Law in Honour of Judge Manfred Lachs*, 1984, pp.605-623.

160. See Nelson, *ILA*, Report to the 62nd Conference, 1986, pp.328-332; Owada, *ibid.*, pp.347-349; Chiu, *Md.J.Int'l.L.Tr.*, 1985, pp.12-16.

161. *Kirca Statement*, §152-153.

cordance with the judgment in the *Tunisia-Libya* case, as the result of the application of equitable principles: "The term 'equitable solution' in Articles 74 and 83 was regarded as comprising the idea of applying equitable principles by taking into account all relevant circumstances with a view to arriving at an equitable result."¹⁶²

Moreover, the existence and position of islands in the delimitation area was esteemed as one of the most significant and relevant factors to be taken into consideration. The words "on the basis of international law" which are included in Articles 74 and 83 do not add any new element to these articles since "equity or equitable solution, which already exists in the articles, is the rule of law."¹⁶³ The same provisions of the articles regarding the delimitation of the continental shelf and the EEZ were considered as applicable for the delimitation of the contiguous zone.¹⁶⁴

(d) *Islands*

Article 121. Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

Despite the various criteria which were proposed during the work of the Conference, the definition of the island in the first paragraph of Article 121 is identical with Article 10 of the Convention on the Territorial Sea and the Contiguous Zone. The same can be said about the substance of the second paragraph of Article 121.¹⁶⁵ There are serious grounds to believe that this is the position of international customary law as well. The *North Sea* cases judgment of the ICJ confirmed this view at least to the extent of the insular

162. *Ibid.*, §156.

163. *Ibid.*, §161.

164. *Ibid.*, §170.

165. See Collier, in *The Law of the Sea and International Shipping*, 1985, pp.173-188.

shelves. The Conciliation Commission in the 1981 Jan Mayen delimitation considered Article 121 as reflecting customary rules.

Nevertheless, the third paragraph introduces an exception, an entirely new rule according to which rocks not capable of human habitation and economic life cannot have an EEZ or continental shelf. It is clear that all rocks can have their own territorial sea and contiguous zone. However, the third paragraph is vague and ambiguous.¹⁶⁶ There is no definition of what constitutes a rock¹⁶⁷ or of the words "economic life" or "human habitation." This paragraph can also create circumstances for confusion and conflict, especially in connection with mid-ocean islands.¹⁶⁸

Article 121 on the regime of islands was interpreted through the prism of considerations relevant to the delimitations of maritime zones. Turkey, in a rather cryptic passage, probably understood only by the Turkish delegate, stated that:

The maritime spaces of the islands *situated in the areas to be delimited* are determined by the application of equitable principles. Hence Article 121 is not applicable to the *islands located in the maritime areas which are subject to delimitation*.¹⁶⁹

In order for islands to have maritime areas, these first have to be delimited. Thus, it is unknown in which circumstances Article 121 can apply. The Turkish delegate did not explain what exactly he wanted to say. He preferred to conclude that the LOSC "can in no way be applied against Turkey, nor would Turkey be bound by any of its provisions, since such claims have no juridical validity."¹⁷⁰

(e) *The Territorial Sea and the Persistent Objector or Allegans Contraria Non Audiendus Est*

The formation of a rule of customary law, irrespective of Conventions, requires general state practice.¹⁷¹ This state practice, "although it is not a

166. See Brown, 1984, p. I.4 17; Churchill and Lowe, 1988, pp.41-42.

167. See definition of a rock in Hodgson, in *Law of the Sea; Emerging Regime of the Oceans*, 1974, pp. 150-151; Fusillo, *IYBIL*, 1978-79, pp.50-52.

168. Hodgson, R.D., and Smith, *ODIL*, 1976, p.232.

169. *Kirca Statement*, §166, (emphasis added).

170. *Kirca Statement*, §172.

171. Oppenheim, p.29.

matter of counting heads,"¹⁷² has to be common and widespread among many states¹⁷³ and must be carried out in such a way as to be evidence of a belief of an *opinio juris sine necessitatis*.¹⁷⁴ The implication of a customary rule of law is that it, by its "very nature, must have equal force for all members of the international community."¹⁷⁵ Thus, the emergence of a twelve-mile limit for the territorial sea as a rule of customary law requires the existence of all these elements and especially the consent of those states "whose interests were specially affected."¹⁷⁶

During the work of UNCLOS III, the great majority of states claimed territorial seas of twelve miles or more. Consequently, by the time the LOSC was concluded, it can be said that the twelve-mile limit had become a rule of customary international law. Even if that were not so, there can be no doubt that the process of the formation of the customary rule finished when the last two significant states, the U.S.¹⁷⁷ and the U.K.,¹⁷⁸ "whose interests were specially affected," announced that they would respect territorial seas of twelve miles.¹⁷⁹

It appears, however, to be accepted by a majority of writers that "individual States may escape being bound by any rule they do not recognise as such."¹⁸⁰ Despite the fact that the empirical references to the persistent objector theory are extremely rare,¹⁸¹ it is generally accepted¹⁸² that, in order for a state not to be bound by the customary rule, one condition has to be fulfilled, namely, that the persistent objector behavior has to be followed "consistently and uninterruptedly."¹⁸³ In other words, the objections must have been maintained "from the early stages of the rule onwards, up to its formation,

172. O'Connell, 1982, p.39.

173. Greig, 1976, pp.19-25.

174. *North Sea*, §44.

175. *Ibid.*, §63.

176. *Ibid.*, §73.

177. Presidential Proclamation, 10 March 1983, *ILM*, 1983, p.461.

178. U.K. Territorial Sea Act 1987, *UKMIL*, *BYBIL*, 1987, p.592.

179. See Churchill and Lowe, 1988, p.67.

180. Weil, *AJIL*, 1983, p.433.

181. See Stein, *HJIL*, pp.459-463; Charney, *BYBIL*, 1985, pp.5-16; e.g., apartheid in South Africa.

182. But see D'Amato's objections only to local or special custom, 1971, pp.252-254.

183. *ICJ Reports*, 1951, p.138; Rousseau, *Droit International Public*, 1970, p.320.

and beyond"¹⁸⁴ and in a consistent way. Moreover, an objector is not able to benefit from his own inconsistencies, since *allegans contraria non audiendus est*.¹⁸⁵

In order for Turkey to prove that it is a persistent objector to the formation of the customary rule of the twelve-mile territorial sea, it has to prove that it has protested against the rule, in a consistent manner, throughout the rule's process of formation, even from the early stages.¹⁸⁶ Thus, the relevant question is when did the process of the formation of the customary rule really start. Customary international law is not static. The early stages of formation of a custom can be identified as the period when a number of states may object to a certain behavior or *opinio juris* and by "breaking existing law...lead [the way] for other nations to follow. Ultimately, new patterns of behavior and obligation develop."¹⁸⁷ Thus, the process started when the first state claimed a territorial sea of twelve miles. According to the rapporteur of the ILC in 1953, there were already five states which had claimed a territorial sea of twelve miles.¹⁸⁸ Consequently, it can be concluded that, even before that year, the formation of a new custom had already started.

Turkey, in 1956, accepted the twelve mile limit for the territorial sea "as a rule of international law."¹⁸⁹ During the work of UNCLOS II in 1960, Turkey expressed the wish that the Conference "ensure freedom of navigation and flight to the greatest possible extent"¹⁹⁰ and later supported the U.S. and Canadian 6+6 miles proposals.¹⁹¹ In 1964, as a matter of reciprocity towards its neighboring states, it claimed a territorial sea of twelve miles in the Black Sea and the Mediterranean. The fact that Turkish objections were raised only "in the course of the preparatory stages of the Conference as well as during the Conference" was admitted by Turkey in the Montego Bay session.¹⁹²

184. Villiger, 1985, p.16.

185. *YBILC*, 1966, Vol. II, commentary, Article 42, p.239, par.1; Stein, p.458.

186. The onus of proof is on the persistent objector, Dupuy, *Mélanges Rousseau*, 1974, p.79.

187. Chamey, *BYBIL*, 1985, p. 21; Akehurst, *BYBIL*, 1974-75, p.27.

188. Bardonnet, *RGDIP*, 1962, p.33.

189. *Supra*, p.12, fn.36.

190. UNCLOS II, *Off.Rec.*, p.41.

191. *Ibid.*, p.93.

192. UNCLOS III, *Off.Rec.*, Vol. XVII, part B., Documents, Turkey, 23 February 1983, p.242.

Evidence of Turkish practice of persistent objection is the case of the territorial waters of Syria which were extended in 1981 from twelve to thirty-five miles. Turkey, in that case, did not claim that, as a matter of reciprocity, its own territorial waters would be extended to the same distance. It objected to the new limits by conducting naval exercises in the area between the twelve and the thirty-five miles.¹⁹³ Thus, under these circumstances, Turkey cannot be characterized as a persistent objector to the twelve mile limit of the territorial sea, but rather as a subsequent objector since it dissented from the rule after its formation.¹⁹⁴ According to the ICJ, a rule of international law is binding on all states and cannot be subject to "any right of unilateral exclusion exercisable at will by any one [state] in its own favour."¹⁹⁵

C. NINE MONTHS-THREE THIRD-PARTY MARITIME DELIMITATIONS

Two years after the LOSC was opened for signature, and within a period of nine months, three decisions on maritime boundaries were added to the judicial decisions concerning delimitations. Two of them, the *Gulf of Maine* and the *Guinea/Guinea-Bissau* cases, dealt for the first time with the problem of determining a common boundary between the continental shelf and the EEZ. The *Libya/Malta* case was concerned only with a continental shelf boundary, although it was treated very much as if it were an EEZ boundary.

1. AN OUTLINE OF THE THREE CASES AND THE AEGEAN SEA

The importance of these cases for the Aegean Sea problem varies from case to case. The first two cases were mainly delimitations between mainland states where islands played a minor role. The *Libya/Malta* case, however, is far more important not only because it constitutes a landmark in the theory of maritime delimitations but, moreover, because it was a delimitation between two states, one of which was an island.

193. Syrian Law 37 of 16 August 1981 in "The Law of the Sea. Current Developments in State Practice," 1987, pp.93-95; see also Valinakis, in *Greek-Turkish Relations: Opinions, Proposals, Views*, 1986, p.54.

194. Villiger, 1985, p.17.

195. *North Sea*, § 63; Akehurst, *BYBIL*, 1974-75, p.26, fn.24.

In 1984, a Chamber of the ICJ gave its judgment over a maritime boundary dispute between the United States and Canada. The two countries asked the Court to draw the course of the delimitation line which was to delimit not only the continental shelf but also the fisheries zones. For this purpose, the parties used the expression "single maritime boundary."¹⁹⁶ The Court, having found that there was no rule of international law barring it from doing so, did not hesitate to draw such a boundary.¹⁹⁷ The geographical analogies between the Gulf of Maine and the Aegean Sea are scarce, if any.¹⁹⁸ While the coasts were scattered with islets, rocks and low-tide elevations, the only significant islands in the area were Nantucket and Martha's Vineyard, on the American side, and the Canadian Maman islands.

Some months after the *Gulf of Maine* judgment, an *ad hoc* arbitration tribunal, consisting of three judges of the ICJ, decided a second case concerning a single maritime boundary between the African States of Guinea and Guinea-Bissau.¹⁹⁹ Since the two countries were adjacent to each other and not opposite, as is the case in the Aegean Sea, this case is of very limited importance to the Greek-Turkish conflict. It should, however, be noted that this case did not touch upon questions of the fundamental principles of delimitation law, and its contribution to delimitation law was relatively limited.²⁰⁰

In 1985, the ICJ delivered its fourth judgment concerning delimitations of maritime zones.²⁰¹ Despite the impression often given by the ICJ that a judgment is based on the same philosophy as previous judgments and relies on their findings, there is not by any means a direct line of continuation through the *North Sea* cases or the *Tunisia-Libya* case and the *Gulf of Maine* case. The *Libya/Malta* case made the breakthrough on the declaratory prin-

196. *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area*, ICJ Reports, 1984, p.246ff. (hereafter cited as *Gulf of Maine*), §5.19. At the time of the Special Agreement, the U.S. did not have an EEZ, though it declared one before the case.

197. But see *Gulf of Maine*, Diss.Opinion Gros, §5-6.

198. On the reactions of "marine policy-makers facing disputes similar to that," see McDorman, Saunders and VanderZwaag, *MP*, 1985, pp.99-102.

199. *Arbitration Tribunal for the Delimitation of the Maritime Boundary between Guinea/Guinea-Bissau*, Award of 14 February 1985, *ILM*, Vol. XXV, 1986, p.252, (hereafter cited as *Guinea/Guinea-Bissau*).

200. David, *AFDI*, 1985, p.387.

201. See also *Maltese Intervention Case*, ICJ Reports, 1984; also McGinley, *ICLQ*, 1985, pp.672ff.

ciple of the continental shelf and marked the end of any notion of delimitation based on natural phenomena.

Furthermore, the *Libya/Malta* case presented a lot of similarities with the Aegean Sea. The ICJ was asked to examine the delimitation of the continental shelves of two states which were opposite each other and not adjacent as in the previous cases. Second, the delimitation was between a long mainland state, Libya, and an island, Malta. For all these reasons, the findings of the Court on this case will be examined more closely.

2. THE BASIS OF TITLE: NATURAL PROLONGATION, PROXIMITY AND THE DISTANCE CRITERION

In the *Tunisia-Libya* case, maritime rights were described as "seaward extensions" of the territory of the coastal state.²⁰² In the same case, distance was recognized as a component of the basis of title although it was not used by the Court.²⁰³ In the *Gulf of Maine* case, the nature of the "common" boundary rendered arguments derived from geology inappropriate to the regime of the superjacent column of water and therefore irrelevant for the delimitation.

in reality a delimitation by a single line...a delimitation which has to apply at one and the same time to the continental shelf and the superjacent water column can only be carried by the application of a criterion, or combination of criteria, which does not give preferential treatment to one of these two objects to the detriment of the other.²⁰⁴

Both parties, as well as the Chamber, agreed that the geological structure was essentially continuous and that the geomorphology consisted of a single uninterrupted physiographical feature. As in the *Tunisia-Libya* case, the situation was characterized "by the absence of any element which interrupts the continuity of the continental shelf." However, as in the earlier decision, the Court pointed out that there might be "a natural separation...from the factual viewpoint between the respective continental platforms of the Parties

202. *Tunisia-Libya*, §75.

203. *Idem*.

204. *Gulf of Maine*, §194.

in dispute.”²⁰⁵ Thus, geological discontinuity remained one factor to be taken into consideration.²⁰⁶

While natural prolongation in a geological or geomorphological sense was rejected by the Chamber, another physical fact, that of geographical adjacency, was presented by Canada as the basis of coastal state title.²⁰⁷ The Chamber acknowledged that, in most cases, the concept of geographic adjacency can express, “perhaps better than that of natural prolongation, the link between a State’s sovereignty and its sovereign rights to adjacent submerged land.” It stressed, however, that the legal nature of the delimitation, as opposed to the physical one, lies in offering a legal title to a maritime area. The boundary “results from a rule of law, and not from any intrinsic merit in the purely physical fact.”²⁰⁸ State sovereignty through the medium of the coastline is what confers title to the adjacent submerged areas to the state. As the Chamber put it, “[it] would not be correct to say that international law recognises the title *conferred on a State by the adjacency* of that shelf or that zone, as if the mere natural fact of adjacency produced legal consequences.”²⁰⁹ Thus, adjacency which could be connected with distance was rejected by the Chamber.

The breakthrough, as regards the basis of the title, was to be made by the *Libya/Malta* case. In the *Tunisia-Libya* case, the ICJ, after rejecting the natural prolongation arguments of the parties which were based on geological and geomorphological data, pointed out, as had the Arbitration Court in 1977, that there is a possibility of a natural dividing line between two continental shelves. Moreover, natural prolongation was rejected only as a criterion for the delimitation of, and not as the basis of title over, the continental shelf.²¹⁰ Probably relying on this, as well as on the finding of the Court in the *Tunisia-Libya* case that the “Tripolitanian Furrow” had a substantial relevance in the present delimitation area, Libya returned to the “natural prolongation-non-encroachment rule” and submitted to the Court the view that

205. *Ibid.*, §47.

206. See Weil, 1989, pp.32-33; on “geographic” natural prolongation, see also Collins, and Rodoff, *MLR*, 1986, pp.20-25.

207. Canadian Counter-Memorial, §555-563.

208. *Gulf of Maine*, §103.

209. *Idem*.

210. Evans, 1989, p.48; Christie, 13 *Geor.JICL*, 1983, pp. 11-12.

a criterion for delimitation of continental shelf areas...can be derived from the principle of natural prolongation because there exists a fundamental discontinuity in the sea-bed and subsoil which divides the areas of continental shelf into two distinct natural prolongations.²¹¹

According to Libya, only the concept of natural prolongation of Article 76 of the LOSC had acquired the status of customary international law. On the contrary, the distance principle was secondary in comparison to the main criterion of natural prolongation.²¹² The fundamental discontinuity in the sea-bed was thus to be found in the so-called Rift Zone, consisting of three main troughs reaching a depth of more than 1,000 meters, and being located closer to the Maltese islands.²¹³

Malta, on the other hand, referred to the distance criterion of Article 76 of the LOSC. Moreover, it maintained that, in spite of the fact that the dispute was directly related to the continental shelf regime, it was impossible for the Court, "without losing sight of the development of the customary international law of the sea, to attempt any delimitation which simply ignores the concept of the exclusive economic zone."²¹⁴

The Court, which was bound to decide the matter in accordance with customary law as the parties had requested,²¹⁵ began its examination of these arguments by noticing that the EEZ had already become part of customary international law. Since there cannot be an EEZ "without a corresponding continental shelf," the two regimes "are linked together in modern law." Thus, "the principles and rules underlying" the EEZ "cannot be left out of consideration." This finding did not mean that the continental shelf had been absorbed by the EEZ, but it signified that "greater importance must be attributed to elements, such as distance from the coast, which are common to both concepts."²¹⁶ The Court did not stop there. It went even further by saying that

since the development of the law enables a state to claim that the continental shelf appertaining to it extends up as far as 200 miles from its coasts, whatever the geological characteristics of the corresponding sea-

211. Libyan Memorial, §4.

212. *Libya/Malta*, §32.

213. *Ibid.*, §9; *Libya/Malta*, §36-38.

214. Maltese Counter-Memorial, §80-81; Pleadings, CR 84/24, pp.57-58; 84/26 pp.35-36.

215. *Libya/Malta*, §11.

216. *Ibid.*, §33-34.

bed and subsoil, there is no reason to ascribe any role to geological or geophysical factors within that distance either in verifying the legal title of the states concerned or in proceeding to a delimitation as between their claims...at least in so far as those areas are situated at a distance of under 200 miles from the coasts in question, title depends solely on the distance from the coasts of the claimant States of any areas of sea-bed claimed by way of continental shelf, and the geological and geomorphological characteristics of those areas are completely immaterial.²¹⁷

Thus, under these circumstances, the "Rift Zone" claimed by Libya was immaterial for the delimitation and could not constitute any fundamental discontinuity since any geological feature less than 400 miles between the coasts of the two parties "would be too geographically proximate to the coast to be of any relevance."²¹⁸ The natural prolongation was connected with physical considerations only in the event that the continental shelf extends more than 200 miles.²¹⁹

Whereas in the past, in the aftermath of the *North Sea* cases, geological or geomorphological arguments were rejected by the Court on the basis of their irrelevance to the specific facts of the case, in the *Libya/Malta* case the Court's rejection was founded on principles. But the Court did not stop there. It continued by making it unlikely that these "natural arguments" could "make their reappearance through the back door of relevant circumstances."²²⁰ Contrary to the *Tunisia-Libya* case, it concluded that "there is no reason why a factor which has no part to play in the establishment of title should be taken into account as a relevant circumstance for the purposes of delimitation."²²¹

These findings have a more than obvious importance for the Aegean Sea where the distances between the coasts of the two states do not extend beyond 400 miles. Natural physical prolongation, as was accepted by the *North Sea* cases, has been relegated to the past. Title over the continental shelves of the two countries in the Aegean Sea is now to be based on the distance from the coasts. To what extent does the title over the continental shelf prejudice the question of the delimitation? The ICJ stated clearly that

217. *Ibid.*, §39.

218. Evans, 1989, p.51.

219. See *Libya/Malta*, Sep.Opinion Mbaye, p.94.

220. Weil, 1989, p.44.

221. *Libya/Malta*, §40.

[the fact] that the questions of entitlement and of definition, on the one hand, and of delimitation of continental shelf, on the other, are not only distinct but are also complementary is self evident. The legal basis of that which is to be delimited, and of entitlement to it, cannot be other than pertinent to that delimitation.²²²

3. NO "READY-MADE" SET OF RULES

The Chamber in the *Gulf of Maine* case made a distinction between principles and rules of international law, on the one hand, and equitable criteria and methods, on the other.²²³ The arguments of the parties concerning the existence of specific equitable principles were rejected on the grounds that "it is...unrewarding...to look to general international law to provide a ready-made set of rules that can be used for solving any delimitation problems that arise."²²⁴ The reason was that customary international law can provide only "a few basic principles" which lay down guidelines to be followed. It cannot be "expected to specify the equitable criteria to be applied or the practical, often technical, methods to be used for attaining that objective."²²⁵

Despite certain doubts that can be raised as to the absolute character of these pronouncements of the Chamber, doubts which were indirectly expressed by the ICJ itself one year later in the *Libya/Malta* case,²²⁶ the rules, according to the Chamber, which have particular importance for the Aegean Sea were defined as follows:

(1) No maritime delimitation between States with opposite or adjacent coasts may be effected *unilaterally* by one of those States. Such delimitation must be sought and effected by *means of agreement*, following negotiations conducted in good faith and with the genuine intention of achieving an equitable result. Where, however, such agreement cannot be achieved, delimitation should be effected by *recourse to a third party* possessing the necessary competence.

(2) In either case, delimitation is to be effected by the application of equitable criteria and the use of practical methods capable of ensuring,

222. *Ibid.*, §27.

223. *Gulf of Maine*, §80.

224. *Ibid.*, §111.

225. *Ibid.*, §81.

226. *Libya/Malta*, §46.

with regard to the geographic configuration of the area and other relevant circumstances, an equitable result.²²⁷

The emphasis in the second of the fundamental rules was placed on the role of geography. While these rules could be limited only to the context of the single maritime boundary, the Chamber expressly stated that this rule derived from the *North Sea* cases and that it applies "in every maritime delimitation between neighboring States."²²⁸

4. THE EQUITABLE CRITERIA, THEIR NORMATIVITY AND THE FACT-INTENSIVE APPROACH

Equity and equitable principles were at the heart of Greek-Turkish polemics throughout the work of UNCLOS III, as well as at a bilateral level after the abandonment of the natural prolongation criterion by the Turkish side. Before examining the remarks of the Tribunals in relation to equity and equitable principles, it is useful to consider the Libyan approach in the *Libya/Malta* case, which has many similarities with the way that Turkey understands this concept. The Libyan government viewed equity on a "factual" basis, autonomous of law. The facts or the relevant circumstances of the case interpreted only through equity, and without the use of any legal method, could lead to an equitable result simply because their equity dictates the result. The Court was asked to examine "the facts, opening up the map, observing the coasts of the Parties...and all the geological and geomorphological features" and, after balancing up these facts, to find *de plano* the equitable solution.²²⁹ This was more or less the Turkish approach. Turkey, after examining the Aegean map, asked if it was equitable for the Aegean islands which lie close to the Turkish coasts to have continental shelves.²³⁰ Thus, equity is to be measured by the judge's eye. Equity is not a procedure for applying the law and it is left without objective elements of control.

The difference between Greece and Turkey as concerns the use of equity can be seen in the way that the ICJ treated equitable principles in the *Gulf of Maine* and the *Libya/Malta* cases. According to the Chamber in the

227. *Gulf of Maine*, §112 (emphasis added).

228. *Idem*.

229. Libyan Reply, p.96; Weil, p.176.

230. "Look at the map...there is a common sense and in this case it is enough to look at the map. According to international law, Greek sovereignty would extend to the Turkish coast!," statement of Turkish Prime Minister Demirel, 5 June 1975.

Gulf of Maine case, customary international law was not the place to seek rules specifically prescribing the application of any particular equitable criteria or practical methods because "it merely contains a general requirement" for the use of these criteria and methods.²³¹ There has been no systematic definition of equitable criteria "and this would in any event be difficult *a priori*, because of their highly variable adaptability to different concrete situations."²³² The equitableness of these criteria "can only be assessed in relation to the circumstances of each case, and for one and the same criterion it is quite possible to arrive at different, or even opposite, conclusions in different cases." In each case, there has to be recourse to the criterion "appearing to be the most appropriate to the concrete situation."²³³ Thus, the Chamber not only followed the route of the previous judgments, but went even further. It considered that each case is *sui generis*.²³⁴ Therefore, with the exception of the fundamental norm which does not actually shed any light on the case, the guidelines that have to be followed will be at the discretion of the Chamber or of any judicial organ on a case by case approach.

But the Chamber did not stop there. It said that it would base itself on the criteria "most likely to prove equitable in relation to the relevant circumstances of the case" in order to reach "an equitable result in the above circumstances."²³⁵ The circumstances of each case dictate the choice of the criteria and the same criteria which derived from the specific circumstances will produce an equitable result. These conclusions lead to the inevitable impression that equity was not applied *infra legem* and, therefore, that the decision was *ex aequo et bono* ²³⁶or, as Judge Gros put it, "equity was once measured by the Chancellor's foot."²³⁷

The Chamber, however, gave a few examples of equitable criteria and practical methods. Equitable criteria were the following: domination of the sea by land; the equal division of the areas of overlap, where no special circumstances exist; the non-encroachment upon areas too close to the coast of

231. *Gulf of Maine*, §114.

232. *Ibid.*, §157.

233. *Ibid.*, §158.

234. See Waldock, "to attempt to lay down precise criteria for solving all cases may be to chase a chimera," 1979.

235. *Gulf of Maine*, §191; Fentress believes that the only limit of the judges was not to be radically inequitable to either side, 15 *Geor.JICL*, 1985, p. 625.

236. Pharand, *RGDOtt.*, 1985, p.383.

237. *Gulf of Maine*, Diss.Opinion Gros, §41.

another state, whenever possible; the prevention, as far as possible, of any cut-off of the seaward projection of the coast of either state; and the consideration, under certain circumstances, from any inequalities in the extent of the coasts of the two states.²³⁸

The Court in the *Libya/Malta* case rejected this approach. It first interpreted the *Tunisia-Libya* terminology concerning equitable principles and the equitable result by saying that the primary element is the equitable result and not the means used to achieve it. The Court "from the beginning, elaborated equitable principles as being, at the same time, means to an equitable result in a particular case, yet also having a more general validity and hence expressible in general terms." The justice "of which equity is an emanation" was considered by the Court not as "abstract justice but justice according to the rule of law; which is to say that its application should display consistency and a degree of predictability."²³⁹

This predictability and consistency of result was one of the most important findings of the Court. In the *Guinea/Guinea-Bissau* case, the Arbitration Court referred to the equitable "factors and methods...[which] result from legal rules" but mentioned that "they are not restricted in number and none of them is obligatory for the Tribunal, since each case of delimitation is a *unicum*."²⁴⁰ The ICJ rejected this view. It pointed out that

while every case of maritime delimitation is different in its circumstances from the next, only a clear body of equitable principles can permit such circumstances to be properly weighed, and the objective of an equitable result, as required by general international law, to be attained²⁴¹.

It was probably the first time in the ICJ judgments on maritime delimitations that it was explained so clearly why the application "of equitable principles is to be distinguished from a decision *ex aequo et bono*." The equitable principles were referred to as principles having a "normative character" and as being "part of general international law."²⁴² From then on, "a solution

238. *Gulf of Maine*, §157; on the paradox between the broad statement of the ICJ and the narrow application of equitable criteria, see Legault and Hankey, *AJIL*, 1985, pp.968-969.

239. *Libya/Malta*, §45.

240. *Guinea/Guinea-Bissau* §89.

241. *Libya/Malta*, §76.

242. *Ibid.*, §46.

which seemed equitable to the judges would not, *simply for this reason*, equate to equity 'as a legal concept'."²⁴³

Believing in the importance of equitable principles and in their normativity as rules of law, the ICJ presented a list of examples of equitable principles which, nevertheless, are "merely part of the litany that surrounds continental shelf delimitation."²⁴⁴

1. The prohibition of refashioning geography, or compensating for the inequalities of nature.

2. The principle of non-encroachment of the natural prolongation of another state.

3. The respect of all the relevant circumstances.

4. The principle that equity does not imply equality.

5. The principle that there can be no question of distributive justice.

These principles "govern not only delimitation by adjudication or arbitration, but also, and indeed primarily, the duty of Parties to seek first a delimitation by agreement which is also to seek an equitable result."²⁴⁵ Thus, even a delimitation by agreement, a long-held Turkish view for the delimitation of the continental shelf, has to respect these principles applied as part of general international law.

5. EQUIDISTANCE

Since the ICJ in the *North Sea* cases emphasized the appropriateness of equidistance for delimitation between opposite states²⁴⁶ and since the only case that clearly concerned a delimitation between opposite states was the *Libya/Malta* case, the Court's approach towards equidistance in this specific case will be examined in this section.

As far as the *Gulf of Maine* case is concerned, the Chamber, after making the necessary statement-explanation that this was not a decision *ex aequo et bono*, but a decision on the "basis of law,"²⁴⁷ examined the 1958 Convention on the Continental Shelf, which was binding upon the two

243. Weil, 1989, p.183.

244. Evans, 1989, p.76.

245. *Libya/Malta*, §46; see Evans, 1989, pp.77-78.

246. *North Sea*, §57.

247. *Gulf of Maine*, §59.

parties. It concluded that the combined rule, according to the *Anglo-French* arbitration, of the equidistance-special circumstances was not applicable in this specific case because of the delimitation of a boundary concerning "much wider subject matter than the delimitation of the continental shelf alone."²⁴⁸ Furthermore, it was pointed out that, according to the *North Sea* case, Article 6 is not a rule of customary international law even for the delimitation of the continental shelf between states which are not parties to the 1958 Convention.²⁴⁹ However, in practice, the Court adopted a provisional median line for the second sector of the delimitation area in which the relationship between the coasts of the two states was one of oppositeness.²⁵⁰

The Court's approach to the equidistance method in three different passages of the judgment in the *Libya/Malta* case is indicative of the way that courts generally treat this method. Malta had argued that, if the distance principle is a rule of customary law, then the application of the equidistance method as a preliminary step is a necessary consequence of this finding. The Court rejected this view and declared that it is unable to accept equidistance even as a preliminary and provisional step because such an idea would come closer to an espousal of the idea of absolute proximity. Moreover, the use of equidistance either as an obligatory method or "as a permissible point of departure" was rejected even for the case of opposite coasts.²⁵¹

However, in a later paragraph of the judgment, the Court had "little doubt which criterion and method" it should employ in order to achieve a provisional position in the present dispute. The Court found it to be logical that the "choice of the criterion and the method which it is to employ in the first place to arrive at a provisional result should be made in a manner consistent with the concepts underlying the attribution of legal title."²⁵² Just after that paragraph, the Court adopted the equidistance method for the delimitation of the opposite coasts as "a provisional step in a process to be continued by other operations."²⁵³

248. §124; see Legault and Hankey, 79 *AJIL*, 1985, pp.988-990.

249. *Gulf of Maine*, §124.

250. *Ibid.*, §206, 217.

251. *Libya/Malta*, §43.

252. *Ibid.*, §61.

253. *Ibid.*, §62.

Therefore, the Court concluded, albeit indirectly, that the equidistance principle is connected with the legal title of distance from the coasts. However, at a different point, the Court repeated the initial view that

the introduction of this criterion has not...had the effect of conferring upon the equidistance method of delimitation the status of...a priority method, to be tested in every case. The fact that the Court has found that, in the circumstances of the present case, the drawing of a median line constitutes an appropriate first step in the delimitation process, should not be understood as implying that an equidistance line will be an appropriate beginning in all cases, or even in all cases of delimitation between opposite States.²⁵⁴

Equidistance, even as a preliminary step, was rejected by the Court in theory, although it was adopted in practice.

6. PROPORTIONALITY AND DISPROPORTION IN COASTAL LENGTHS

The way that disparity of the coastal lengths as a relevant factor for the delimitation and proportionality was applied as a test of equity by the ICJ can have a particular relevance to the Aegean because of the concavity that mainly characterizes the Greek coasts. Notably, in the three cases discussed above, it was only in the *Libya/Malta* case that a coastal state, Libya, attached great importance to the disparity in the length of the coastlines, and this was natural, due to the enormous difference between the coastal lengths of the two countries concerned. It can be expected that, although this has never been mentioned up to now, a tempting Turkish argument could be that the difference in the coastline lengths in the Aegean should be taken into account in order to arrive at an equitable solution.²⁵⁵ It should be recalled at this point, however, that in the *Tunisia-Libya* case the Court caused problems for itself by relying too heavily on proportionality.

In the *Gulf of Maine* case, the ICJ held that "a maritime delimitation can certainly not be established by direct division of the area in dispute proportional to the respective lengths of the coasts belonging to the parties in the relevant area."²⁵⁶ At the same time, it considered that "a substantial dispro-

254. *Ibid.*, §77.

255. See, e.g., Yolge, in *The Aegean Issues: Problems and Prospects*, 1987, p.134 (Longueur des côtes).

256. *Gulf of Maine*, §185.

portion to the lengths of the coasts that resulted from a delimitation on a different basis would constitute a circumstance calling for an appropriate correction.”²⁵⁷ Thus, the disparity between the coastal lengths of the United States and Canada was used to influence the application of the method in the second segment of the delimitation line. The ratio of the coasts was found to be 1.38 to 1. When the Chamber shifted the corrected median line in a location where the ratio was approximately 1.32 to 1,²⁵⁸ it was not engaged in any *a posteriori* confrontation of the ratios of the coastal lengths with the maritime areas.

In the *Libya/Malta* case, the Court pointed out that proportionality “is one possibly relevant ‘factor’ among several other factors to ‘be taken into account’” and that it does not constitute an independent principle or method for the construction of a boundary line.²⁵⁹ The Court continued by speaking of the two functions that the disparity in the lengths of the coastlines can play in the delimitation. From the one side, a very marked difference in coastal lengths has to be taken into consideration in the course of the delimitation process. From the other side, proportionality between the coastlines and the areas of continental shelves attributed to them can be employed *ex post* to check the equitableness of the result.

As a first step, the Court examined if the disparity in the lengths of the coastlines constituted a relevant circumstance “which should be reflected in the drawing of the delimitation line.”²⁶⁰ This disparity in the coastal lengths has to be obvious, otherwise, if it “only emerges after scrupulous definition and comparison of coasts, it is *ex hypothesis* unlikely to be of such extent as to carry weight as a relevant circumstance.”²⁶¹ The lengths of the coastlines of the two parties was 192 miles for the Libyan coast and 24 miles for Malta. This difference was so great as to justify the adjustment of the provisional median line that the Court drew, in order to attribute a larger shelf area to Libya.²⁶² It should be noted at this point that the language of the ICJ gave the impression that coastline proportionality, as part of the delimitation process, should be taken into account only when there is a provisional boundary based on the median line: “consideration of the comparability or otherwise of the

257. *Idem*.

258. *Gulf of Maine*, §222.

259. *Libya/Malta*, §57.

260. *Ibid.*, §68.

261. *Ibid.*, §67.

262. *Idem*.

coastal lengths is a part of the process of determining an equitable boundary on the basis of an initial median line."²⁶³

The second function of disproportion in the coastal lengths came after the end of the delimitation process. In this second stage, the equitableness of the solution was judged after comparing the coastal lengths of the two states, not between themselves, but with the areas of their respective continental shelves. The ICJ rejected the mathematical approach it followed in the *Tunisia-Libya* case. On the contrary, it considered that it was not necessary "to achieve a predetermined arithmetical ratio in the relationship between the relevant coasts and...the areas generated by them" because under the specific circumstances this "would be unrealistic."²⁶⁴ No figures were presented by the Court which considered generally that "there is certainly no evident disproportion in the areas" attributed to each of the parties and, thus, "the requirements of the test of proportionality as an aspect of equity" were satisfied.²⁶⁵

The *ex post* test of proportionality was also not used in the *Guinea/Guinea-Bissau* case. The Tribunal was faced with conflicting figures provided by the parties, a problem common to the Aegean Sea as well. After it made its own calculations, the Court considered that the two parties had coastlines of the same length,²⁶⁶ and, therefore, neither of the parties could claim any additional advantage.²⁶⁷ Moreover, the Tribunal considered that proportionality between the length of the coastline and the surface area to be attributed to each state must not be exaggerated, that a delimitation is a legal operation which can refer to circumstances which may have physical characteristics but these circumstances should be based on considerations of law.²⁶⁸ Furthermore, proportionality was found to be not a mechanical rule but, on the contrary, "it must be used in a reasonable way, with due account being given to other circumstances of the case."²⁶⁹

In the three cases under examination, proportionality was approached in two different ways: first, as a circumstance relevant for the delimitation and,

263. *Ibid.*, §66; McDorman, 24 *CYBIL*, 1986, p. 355.

264. *Libya/Malta*, §74; Jaenicke believes that this approach would not only have been unrealistic but incompatible with the proportionality concept, 1986, p.60.

265. *Libya/Malta*, §75; see Weil for problems of the possible emergence of a new "natural" criterion, 1989, pp.240-243.

266. *Guinea/Guinea-Bissau*, §97.

267. *Ibid.*, §120.

268. *Idem.*

269. *Idem.*

second, as a test of the equity of the result. Proportionality as an *a posteriori* test was not used by the Tribunals in the same way as the ICJ had done in the *Tunisia-Libya* case. On the contrary, broad calculations were made which revealed the equity of the result without recourse to mathematical ratios.

7. PRIMARY AND SECONDARY COASTS AND RADIAL PROJECTION

That a coast projects to the sea in all directions is a matter so obvious that it does not require reasoning.²⁷⁰ In the world of maritime delimitations, however, this can have far-reaching consequences since the projection of an island radiates 360 degrees around its coasts. Whereas this radial projection cannot create any problems in open oceans, in limited maritime spaces the situation is completely different. In the *Gulf of Maine* case, the ICJ faced the question of the frontal projection of coasts, whereas, in the *Libya/Malta* case, it faced the question of the radial projection of the coasts of islands. The effect of this radial or frontal projection is very important in the Aegean Sea where the Greek islands, with a limited coastal front directly facing the Turkish coasts, are opposite the extended Turkish coastline. In a delimitation of the territorial sea, the radial projection takes the form of arcs and circles from the baselines.²⁷¹ To what extent can the same techniques apply to a delimitation of a far extended maritime zone?

In the *Gulf of Maine* case, the United States claimed that the boundary line should allocate maritime spaces in proportion with the coasts of each state while it made a distinction between primary and secondary coasts. Primary coasts were those that were aligned with the general direction of the east coast of North America. Secondary coasts were the coasts that projected into the sea in a direction of right angles to the coast.²⁷² Canada argued in its counter-memorial that there is no coastal hierarchy and that its coasts project radially in the delimitation area since the maritime zone "of a coastal State...is not to be thought of as a platform in front of its coast, but as a broad belt of sea surrounding its territory in every direction."²⁷³ The Court rejected the

270 See in general Weil, 1989, pp.67-69.

271. See Boggs, *Geog.Rev.*, 1937; 45 *AJIL*, 1951; Voelckel, *AFDI*, 1979.

272. United States Memorial, §287, 309. See map 8.

273. Canadian Counter-Memorial, §151, 564-568; Canadian Reply, §73.

theory of primary and secondary coasts and remained silent as to the radial projection of the coastal front.²⁷⁴

In the *Libya/Malta* case, the two parties argued about the radial projections of islands. While Libya accepted that an island in an open ocean can radiate in all directions, it denied this right to the Maltese islands on the grounds that the only relevant coasts are the coasts which face each other. These coasts can project only in one direction, towards each other, in the delimitation area. Thus, Malta could project only to the south and Libya to the north. Due to the limited coastal front of the Maltese islands, their frontal projection corresponds only to a limited maritime space. On the contrary, the Libyan coasts, which were far more extended, could claim maritime areas which were lying to the east and to the southeast of the Maltese islands.²⁷⁵

The Court remained silent, avoiding any pronouncement on the arguments of the parties on the grounds that these claims extended beyond the area to which it found that it had jurisdiction.²⁷⁶ Nevertheless, it pointed out that this decision did not signify "that the claims of either Party to expanses of continental shelf outside that area have been found to be unjustified."²⁷⁷ This approach did not mean that the radial projection theory had been rejected by the ICJ or had been endorsed by it.²⁷⁸ In a separate opinion, three judges severely criticized this point on the grounds that this phrase "might be interpreted as having the effect opposite to that of rejection and as encouraging the insistence upon this claim."²⁷⁹ However, it is true that "there is no reason why a coast should project in all directions if it faces the ocean on its own, but only frontally when faced with a parallel coast."²⁸⁰ In any case, the question remained unanswered.

274. *Gulf of Maine*, §36-37; Weil believes that the Chamber implicitly preferred the theory of the radial projection, 1989, fn.153, p.66.

275. Libyan Memorial, pp.156-157; Libyan Reply, p.78.

276. *Libya/Malta*, §21.

277. *Idem*.

278. Weil, 1989, p.68.

279. *Libya/Malta*, Joint Separate Opinion, §2.

280. Weil, 1989, p.68.

8. SECURITY CONSIDERATIONS AND THE DISTANCE BETWEEN THE COASTS OF THE PARTIES

Due to the nature of the Greek-Turkish dispute and the particular geographical characteristics in the Aegean Sea, it is important to examine any security considerations invoked by the parties or those which have been raised by the Tribunals in the three cases discussed above. More specifically, it is undisputable that the factor of proximity between the maritime frontier and the coasts of the states is very important from the security point of view in the Aegean Sea. Greece is concerned about the possibility of the eastern Aegean islands being invaded by Turkey, as happened with Cyprus in 1974. Turkey, on the other hand, believes that these islands can constitute bases for raids in Asia Minor, which occurred in 1919.²⁸¹

The adoption of a maritime frontier which would be too close to its Atlantic coast led to the United States' objection in the *Gulf of Maine* case. The American concern was focused on the possibility that a future boundary would be placed off the northern part of the American coasts, facing, not the high seas and Europe, but "Canadian waters." This argument was similar in many respects to the Turkish contention that a possible extension of the Greek territorial sea or a future delimitation of the Aegean continental shelf would cut off the Turkish mainland from the high seas. As the United States noticed, "the issue of cut-off...raises the most fundamental questions of sovereignty" since it is unknown what the future regime of the maritime zones will be.²⁸² This security-political concern echoes in many respects the worries of the two countries in the Aegean. They fear that the limited rights over the continental shelf could be transformed one day into full sovereignty.

A further point which could be relevant to the Aegean was the U.S. contention that among the relevant circumstances that the Court should take into consideration were "arrangements concerning navigation, safety at sea, and pollution."²⁸³ Greece has control of navigation in the Aegean Sea and has been responsible for safety, rescue and pollution in this area since 1944.²⁸⁴ However, Turkey has quite often tried to change this situation in the eastern part of the Aegean Sea.²⁸⁵

281. Ahnish, 1993, p.382.

282. CR 84/26, pp.49-50.

283. U.S. Memorial, §224, 259.

284. See Kartalis, 1989, pp.85-86.

285. See *infra*, pp.266-267.

Canada rejected all the American arguments on two grounds. First, the historic defense and security practice pre-dated the claims of the two states over the areas of the Gulf of Maine. Second, these considerations were in any case regarded as irrelevant to any possible boundary delimitation.²⁸⁶ Furthermore, Canada contended that, in the *Anglo-French* arbitration, all defense considerations were rejected.²⁸⁷

In the *Libya/Malta* case, both parties argued the significance of security considerations for the delimitation of their continental shelves. Malta emphasized the risk to its security of a continental shelf delimitation which would allow Libya to build installations very close to the Maltese coasts. The Maltese put forward an example which is actually applicable in the Aegean, where "foreign physical presence within...so short a flight of Malta, not more perhaps than 15 minutes flight from its principal centres of population...is bound to be creative of genuine unease to Malta."²⁸⁸ The difference between the *Libya/Malta* case and the Aegean Sea lies in the fact that the "foreign physical presence" is already there within a fifteen-minute flight and is not really dependent on the position of the continental shelf boundary. Malta considered that these security interests would militate in favor of a boundary based on the equidistance line which would secure that there would be a sizable distance between the two states.²⁸⁹ It is interesting to note that some of the Greek arguments in favor of an equidistance principle are based on the same idea.

Libya, on the other side, rejected totally the idea that any security interests were relevant to the case. However, it has been pointed out that, since all the Maltese centers of population are located to the north, Malta's security interests lie to the north as well. The area to the south is an area of particular security concern for Libya.²⁹⁰

The Tribunals did not adopt the same approach towards security and defense. For example, the Court, in the *Gulf of Maine* case, did not examine the arguments of the parties at all. It simply noted that "common defence arrangements may require an examination of valid considerations of a politi-

286. Canadian Counter-Memorial, §104, 205, 446-450.

287. *Ibid.*, §605.

288. Lauterpacht, *Verbatim Records*, 84/23, pp.60-62.

289. Maltese Counter-Memorial, §210; for more, see Evans, 1989, pp.175-176.

290. Libyan Memorial, §6.78 and 9.10.

cal...character.”²⁹¹ Only after the establishment, on the basis of equitable criteria, of a delimitation line, may these aspects, such as common defense, be taken into account. If they are taken into consideration in an earlier stage, the decision will not be based in law, but it will be a decision *ex aequo et bono*.

In the *Libya/Malta* case, the ICJ found that one of the relevant circumstances to be taken into consideration was the distance between the coasts of the two states. This factor is important when the Court has to decide

whether, and by how much, a median line boundary can be shifted without ceasing to have an approximately median location, or approaching so near to one coast as to bring into play other factors such as security.

The relevance of this paragraph to the situation in the Aegean is apparent in terms of security reasons. Distances between the coasts of the Greek islands and the Turkish mainland are rather limited. The Court understood that the rather extended areas between the two states in the *Libya/Malta* case clearly left “room for a significant adjustment, if it is found to be required for achieving an equitable result.”²⁹² This finding, which implies that the greater the distance between the coasts of two opposite states, the larger the correction of the median line, was criticized by Judges Schwebel and Mbaye as a consideration without explanation.²⁹³ As Judge Mbaye pointed out, “if the distance between the coasts of the two States were less than 24 nautical miles, what would be at issue would be the territorial waters” and, thus, he did not think it “likely that any question would arise of adjusting the territorial limit of the two States.”²⁹⁴ Furthermore, it was questioned whether it would make any difference if Malta were only fifty miles from the Libyan coasts, since “the difference in the lengths of coasts of two opposite States neither increases nor decreases with the distance between them.”²⁹⁵

The Court also admitted that relevant circumstances included security interests. However, it noted that in this particular case the boundary of the continental shelf was not going to be “so near to the coast of either party as to make questions of security a particular consideration.”²⁹⁶ The acceptance that the considerable distance between the coasts does not bring into play security

291. *Gulf of Maine*, §59.

292. *Libya/Malta*, §73.

293. *Libya/Malta*, Diss.Opinion Schwebel, p.182; Diss.Opinion Mbaye, p.100.

294. *Libya/Malta*, Diss.Opinion Mbaye, p.100.

295. *Ibid.*, p.101.

296. *Libya/Malta*, §51.

factors underlies the problem in the Aegean where the two states are already very close. It is interesting to note the opinion expressed by Judge Nikolaos Valtikos, namely, that despite the fact that the "risk is admittedly less with the solution chosen by the Court," it would have been even further reduced if the median line adopted had been "pure and simple."²⁹⁷

In the *Guinea/Guinea-Bissau* case, security considerations were invoked by both parties. The Court emphasized that neither the continental shelf nor the EEZ were zones of sovereignty. In any case, the Tribunal had "taken care to ensure that each State controls the maritime areas situated opposite of its coasts and in their vicinity."

Its prime objective has been to avoid that either party, for one reason or another, should see rights exercised opposite its coast or in the immediate vicinity thereof, which could prevent the exercise of its own right to development or compromise of security.²⁹⁸

As has been noted, however, the delimitation boundary came only within a distance of two miles from the small deserted island of Alcatraz, which can be explained by concluding that small islands which can constitute special circumstances do not have the same weight as mainlands as regards security.²⁹⁹

The approach of the *Guinea/Guinea-Bissau* Tribunal in relation to navigation was also interesting. The ICJ in the *Libya/Malta* case did not mention at all any possible navigation interests in the area, whereas in the *Gulf of Maine* case it rejected them.³⁰⁰ In the *Guinea/Guinea-Bissau* case, Guinea-Bissau mentioned its particular interest in having free access to the port of Buba by the Orango Channel and the Rio Grande estuary. Although the Court of Arbitration did not mention this, the line that it adopted offered free access to that port.³⁰¹ Turkey also wants to have free access to its port in Izmir in the Aegean Sea.

297. *Libya/Malta*, Sep. Opinion Valtikos, §27.

298. *Guinea/Guinea-Bissau*, §124.

299. Evans, 1989, p.177.

300. Assistance, rescue, research and the physical presence of humans as well as the existence of urban centers and ports, which was what the Chamber called "human and economic geography," were considered the navigation interests in the *Gulf of Maine* case, §232-235.

301. Evans, 1989, p.182.

The main characteristic of all these cases was the fact that, although security considerations were not directly involved in the judgments, they were mentioned either by the parties or by the Courts. There is nothing to indicate that these considerations will be irrelevant in a future delimitation in the Aegean Sea. On the contrary, the indications from the judgments are that a certain width of maritime zone is necessary to every coastal state. The problem, however, in the Aegean Sea is that the distance between the coasts is already very much less than it is in these three cases. Thus, it seems that security considerations are more likely to emphasize mainly the predominant interest of one of the two states, as happened in the *Anglo-French* arbitration, rather than providing the grounds for a greater maritime space for one of them in the already limited areas of the Aegean Sea.

9. THE LANDMASS AND THE COASTAL FRONT

An inherent characteristic of an island is that in most cases it possesses a limited landmass in comparison with a mainland. The Aegean Sea is no exception to this rule. The Greek islands have a limited landmass in comparison with the enormous Anatolian peninsula. At this point, it should be remembered that, on at least two occasions, Turkey tried to use a landmass criterion for the allocation of ocean spaces to islands, once during the period of the Sea-Bed Committee³⁰² and a second time during the work of UNCLOS III.³⁰³ Thus, arguments related to the question of whether the landmass can be considered as a relevant circumstance for delimitation have direct relevance to the Aegean Sea.

One of the basic Libyan arguments in the *Libya/Malta* case concerned the enormous disparity of landmass between Libya and Malta. According to Libya, the landmass behind the coasts was one of the relevant geographical considerations which could give a state the "factual basis and legal justification" to entitle its greater landmass to have a more intense maritime projection.³⁰⁴ The landmass was related to the concept of natural prolongation since "an equitable delimitation should reflect the landmass behind the coast in terms of the 'weight' of its natural prolongation."³⁰⁵

302. Proposal on the "Regime of Islands," 1973 Session, A/AC.138/SC.II/L.43.

303. See *supra*, pp.112-113.

304. See Libyan Memorial, §9.11.

305. Libyan Reply, §7.10.

The Court rejected clearly and unambiguously this argument on the grounds that it "has never been regarded as a basis of entitlement to continental shelf rights." On the contrary, the coastlines were used as the medium through which a state could exercise its jurisdiction to the continental shelf.

The capacity to engender continental shelf rights derives not from the landmass, but from sovereignty over the landmass; and it is by means of the maritime front of this landmass, in other words by its coastal opening, that this territorial sovereignty brings its continental shelf rights into effect.³⁰⁶

This emphatic view was to be confirmed by the Court of Arbitration in the *Guinea/Guinea-Bissau* award where the two parties argued over the question of whether proportionality should be taken into account in relation to the landmass of each state or in relation to the length of their coastlines. The Court found that:

The rights which a State may claim to have over the sea are not related to the extent of the territory behind its coasts, but to the coasts themselves; a State with a fairly small land area may well be justified in claiming a much more extensive maritime territory than a larger country.³⁰⁷

Thus, within a period of some months two international Courts confirmed with equal cogency the view that only the coasts are important for a delimitation, while the size of the landmass of the hinterland is totally irrelevant to the process of delimitation. Nevertheless, and despite this unequivocal rejection of the landmass as a relevant circumstance by the ICJ, the size of the islands was made relevant by an indirect reference of the Court in the *Libya/Malta* case in relation to the general geographical context. The islands of Malta were characterized as "a minor feature of the northern seaboard of the region in question"³⁰⁸ or "as a relatively small feature in a semi-enclosed sea."³⁰⁹ These references contained beyond any doubt elements of thinking related to the landmass,³¹⁰ which in practice contradicted the view that the size of the landmass is not a circumstance directly relevant to the delimitation.³¹¹

306. *Libya/Malta*, §49.

307. *Guinea/Guinea-Bissau*, §119.

308. *Ibid.*, §69.

309. *Ibid.*, §73.

310. See also Brownlie in *Jan Mayen* case, Verbatim Records, CR 93/7, pp.65-67.

311. Evans, 1989, pp.164-165.

10. THE LAND FRONTIER

The Chamber in the *Gulf of Maine* case enumerated among the practical methods one that may have some interest for the Aegean, namely, the prolongation of an existing delimitation line for territorial waters.³¹² This was a step forward from the *Tunisia-Libya* case which had mentioned as a relevant circumstance "the position of the intersection of the land frontier with the coastline."³¹³ A situation similar to that of the *Gulf of Maine* case arose in the *Guinea/Guinea-Bissau* case because of the existence of the so-called "*limite sud*" which ran from the end of the land boundary to the ocean. This limit was not breached by the colonial powers who occupied the two countries in the past.³¹⁴ The relevance of the limit was confined to indicating the appropriate starting point for the delimitation.

Both these approaches, and especially the prolongation of an existing delimitation line, could be applied in the northern Aegean where the land frontier between the two countries was extended to a distance of three miles from the Evros River to the sea. The maritime areas, however, to which this method can be applied are rather limited because some six miles after the point where the existing delimitation line stops there is the six-mile territorial sea of the island of Samothrace.³¹⁵

11. THE PRESENCE OF ISLANDS IN THE DELIMITATION AREA

The importance of the treatment of islands is considerable because it offers a paradigm for the Aegean Sea conflict. But what is equally important is the fact that the way the Tribunals treat islands may have some influence on Greece and Turkey with regard to third-party delimitation. For example, between 1977 and the end of UNCLOS III, Turkey opposed the idea of basing the dialogue between the two countries on international law and judicial practice. If judicial practice tends to disregard islands, it can be expected that Turkey will be more willing to rely more on the rules of international law than on "political" considerations or even to accept a third-party delimitation.

Of the three judgments, the landmark decision among them on the position of islands in the delimitation area is the *Libya/Malta* case. Islands also

312. §159.

313. *Tunisia-Libya*, §81, 133 b(4).

314. *Guinea/Guinea-Bissau*, §105-107.

315. See also Ahnisch, 1993, p.383.

played a role in the other two cases, albeit a less central one. In the *Gulf of Maine* case, the Court proceeded to apply equitable principles, criteria and methods, while it gave the primary role to the geographical circumstances of the area. Within the delimitation area, the existence of islands was taken into consideration in various ways. The *North Sea* cases *dictum* concerning the existence of islets and rocks was repeated and the Court referred to the

potential disadvantages inherent in any method which takes tiny islands, uninhabited rocks or low tide elevations, sometimes lying at a considerable distance from terra firma, as basepoint for the drawing of a line intended to effect an equal division of a given area. If any of these geographical features possess some degree of importance, there is nothing to prevent their subsequently being assigned whatever limited corrective effect may equitably be described to them, but that is an altogether different operation from making a series of such minor features the very basis for the determination of the dividing line.³¹⁶

For the drawing of the median line in the second of the three segments into which the Chamber divided the delimitation area, the presence of a "minor aspect" had some influence on the boundary. A little island, the Seal, off the peninsula of Nova Scotia, was not disregarded "by reason both of dimensions and, more particularly, of its geographical position." Seal island is less than three miles long and is inhabited all the year round. It was considered as occupying a "commanding position in the entry to the Gulf."³¹⁷ The Chamber gave to the island "half effect." However, in this case, the "half effect" theory had a different meaning from the *Anglo-French* arbitration and the *Tunisia-Libya* case. The distance between the island and the coast of Nova Scotia was 14,234 meters. Half effect meant that a length of 7,117 meters, or, in other words, half the distance between the island and mainland coasts was added to the Canadian portion of the boundary line.³¹⁸ The other islands of the area were treated as part of the coastline, while some insignificant rocks and islets were not included in the baseline. Nantucket island was taken as a point for determining the final segment in the delimitation area.³¹⁹

The approach of the Tribunal in the *Guinea/Guinea-Bissau* case was different. In the delimitation area, there are several islands. The Court of

316. *Gulf of Maine*, §201; also §210.

317. *Ibid.*, §222.

318. *Libya/Malta*, Diss.Opinion Oda, §76.

319. *Gulf of Maine*, §225.

Arbitration distinguished three types of islands the effect of which in the delimitation process varied. In the first category, there were the islands lying very close to the coast and separated from the mainland by narrow sea channels. These islands were taken into account as part of the coastline. The second type of islands consisted of the Bijagos islands, most of which were inhabited and lying at a distance of between two and thirty-seven miles from the coast. These islands, despite the fact that they were comparatively large and inhabited, were only used to establish the convexity of the Guinea coastline; they were not used for the drawing of the actual boundary.³²⁰ The Tribunal adopted a radically macro-geographical methodology which meant that, in practice, the Bijagos archipelago was given no effect at all. The construction line of the boundary ran landward of all the Bijagos islands and thus eliminated their effect.³²¹

The reason that these islands were included in the actual length of the coastline was not made very clear legally. If these islands were excluded, the coasts of Guinea-Bissau would be reduced by 20%, which was enough to make the Court consider the importance of the islands in this case. The question is on which legal grounds does a difference of 20% become disproportionate? If the difference had been 10%, would the Court have taken into account the Bijagos islands?³²² In any case, these first two categories of islands were considered by the Court as examples of relevant circumstances.

In the third category, there were some islands scattered over shallow areas which in general were not to be taken into account.³²³ However, one of them, the small island of Alcatraz, played a more important role in the actual drawing of the delimitation line than the Bijagos islands. This island was located on the wrong side of the mainland-to-mainland equidistance line.³²⁴ According to Guinea-Bissau, it had to be ignored. On the contrary, Guinea wanted to give limited effect to it in exchange for treating the Guinea-Bissau Bijagos islands as having no effect at all. The Court decided to give only 2.25

320. For the importance and scale of the Bijagos islands, see *Guinea-Bissau/Senegal* case, Award of 31 July 1989, Diss.Opinion Bedjaoui, §108, 134.

321. *Guinea/Guinea-Bissau*, §111.

322. Tanja, 1990, p.262.

323. *Guinea/Guinea-Bissau*, §95.

324. *Ibid.*, §103.

miles to the north, where Guinea-Bissau lay, and twelve miles to the direction of the ocean to the west.³²⁵

The *Libya/Malta* case is of great importance for two reasons. The first concerns the arguments of the parties which can be related in many respects to the position of Greece and Turkey in the Aegean Sea conflict. The second reason concerns the pronouncements of the Court. During the hearings of the case, Libya relied strongly on the insular nature of Malta in order to minimize its rights over the adjacent continental shelf. While both states agreed that islands are entitled to have continental shelves, Libya contended that all the islands have to be treated in a particular way, similar to that in the *Anglo-French* case. Malta, on the contrary, distinguished between an island state and an island politically linked with a mainland state, the latter being a situation which exists in the Aegean. According to the Maltese view, only these dependent islands have varying effects on the continental shelf delimitation, depending on factors such as size, geographical position, population or economy.³²⁶

Before examining the pronouncements of the ICJ in relation to the insular shelves, it should be pointed out that, due to the fact that the Court limited the area of delimitation between the two countries because of the existence of third state claims, the problem has lost part of its interest.³²⁷ The Court, after recalling that the entitlement to continental shelves is the same for mainlands and islands without the latter having any special status, noticed that the Maltese arguments meant that the coastal relationship would have been different if Malta had been part of the territory of another state. This situation was particularly relevant not "solely to the circumstances of Malta being a group of islands, and an independent State, but also to the position of the islands in the wider geographical context, particularly their position in a semi-enclosed sea."³²⁸

Despite these statements of the Court, it is difficult to draw more general conclusions for the treatment of islands in semi-enclosed seas. The ICJ expressed, "for the sake of argument," some strange views by examining what the position of the Maltese islands would have been if these were part of Italy. It drew the conclusion that, in a hypothetical delimitation "based solely upon

325. *Ibid.*, §111(a).

326. *Libya/Malta*, §52.

327. Conforti, *RGDIP*, 1986, p.329.

328. *Libya/Malta*, §53

the coasts of Libya to the south and Sicily to the north," some account would be taken of the islands of Malta. Therefore, it was reasonable "that an equitable boundary between Libya and Malta must be to the south of a notional median line between Libya and Sicily."³²⁹

Thus, Sicily, which itself is a large island, was treated in this hypothetical delimitation as mainland. The islands of Malta, which was one of the two parties to the case, were ignored *ex hypothesis*.³³⁰ As Judge Shigeru Oda pointed out, "the technique of the judgment involves taking the entire territory of one party as a special circumstance affecting a delimitation which the Court has no call to make and which excludes that very Party!"³³¹ Judge Mosler noted that "it is hardly possible to find a particular method of evaluating" the existence of the Maltese islands in the semi-enclosed area of the central Mediterranean.³³² The impression was that the median line adopted by the ICJ was drawn as if Malta were not there,³³³ since this line "bears more resemblance...[to] a median line between Sicily and Libya, but certainly not one between Libya and Malta."³³⁴

Another problem that arose in relation to the practical method that the ICJ followed was whether all islands should have baseline status for measuring the equidistance line when delimiting the continental shelf. Malta had included in a system of straight baselines the uninhabited islet of Filfla. This was in many respects a situation which was similar to the inclusion of the uninhabited Rabbit islets and rocks between Imbros and Tenedos in the Turkish system of straight baselines out of the Turkish straits. The Court did not "express any opinion [on] whether the inclusion of Filfla in the Maltese baselines was legally justified." However, the Court did not feel bound to follow identical baselines with these, as they were determined by the coastal states, since the points chosen on a coast in order to calculate the area of

329. Ibid., §72

330. *Libya/Malta*, Sep.Opinion Sette-Camara, p.74; Diss.Opinion Oda, §22.

331. *Libya/Malta*, Diss.Opinion Oda, §27.

332. *Libya/Malta*, Diss.Opinion Mosler, p.121.

333. *Libya/Malta*, Diss.Opinion Schwebel, p.180.

334. *Libya/Malta*, Diss.Opinion Oda, §27; see also Joint Sep.Opinion Ruda, Bedjaoui and Jimenez de Arechaga, §18, who contested the assumption that the Libya-Sicily median line should constitute an absolute limit, especially in view of the disparity of the lengths of the Sicilian and Libyan coasts.

continental shelf can be different. The islet of Filfla, probably because of "its minuscule size and uninhabited character," was not taken into account.³³⁵

From the three cases under examination, it is clear that different techniques were used for the treatment of the islands. Also, there was no consistency in the way that the islands were treated. Sometimes, they were not taken into consideration at all, sometimes they were used as basepoints despite the fact that they were very close to the coasts of the other state and sometimes they were given only half or partial effect. There is, however, an unmistakable trend, which probably did not pass unnoticed by Turkey. In general, judicial and arbitral practice tended not to take full account of the existence of islands. However, this was largely the result of the fact that the way islands were treated was not based on clearly defined legal principles, and sometimes there was a lack of legal reasoning. Thus, while it may be convenient for Turkey to use these three cases as examples, it is unlikely that it will want to rely on rules of international law to a greater extent than it did in the past.

12. AN OVERVIEW, OR THE SOUND OF A DIFFERENT DRUMMER

As has been quite rightly noted, it is standard procedure to criticize a boundary delimitation,³³⁶ either because the Court did not articulate clear reasoning, or because it did not provide a clear statement of the method that it used, or even just for the sake of argument. However, of the three cases under examination, the decision of the ICJ in the *Libya/Malta* case, as far as it concerns the title over the continental shelf, was not "*seulement fondée en droit, mais elle est aussi salutaire*."³³⁷ The abandonment of any consideration based on "natural boundaries," which had already started in the *Tunisia-Libya* case and was continued to a certain extent by the *Gulf of Maine* case, was clear and unambiguous. The distance criterion was to prevail in areas of continental shelf which are less than 400 miles. The ICJ "with clarity and courage" recalled its contrary decisions³³⁸ and accepted in practice the developments of the so-called "modern law."

The solutions in all three cases cannot be characterized as predictable. The Chamber in the *Gulf of Maine* case adopted a variation of the methods

335. *Libya/Malta*, §64; Diss.Opinion Schwebel, p.179.

336. McDorman, *CYBIL*, 1986, p.362.

337. Conforti, *RGDIP*, 1986, p. 328.

338. Weil, 1989, p.45.

and quite unexpectedly divided the delimitation area into three segments. Moreover, as has been rightly noted, "from the perspective of the development of international law the Chamber's judgment is probably most significant for clarifying what is not relevant."³³⁹

The Tribunal in the *Guinea/Guinea-Bissau* award adopted a macro-geographical methodology which included all the future delimitations in that area of Africa. Also, the Tribunal "completely disregarded" the pronouncements and reasoning of the *Gulf of Maine* case, even though the ICJ judgment had been rendered just four months prior to its own decision.³⁴⁰ Furthermore, the Tribunal indirectly questioned the possibility of its decision serving as a precedent for future delimitations. It explicitly declared its "subjectivity" by saying that "the decision...must reflect the deep-seated convictions of the Arbitrators and *their sense of justice*."³⁴¹

As far as the *Libya/Malta* case judgment was concerned, the fact that two median lines were drawn, one between Libya and Sicily and the other between Libya and Malta, although it seems to be "quite original and clever" was hardly predictable.³⁴² Despite the fact that legal normativity started to take shape again after this case, as long as equitable principles are not sufficiently clear and undoubtedly within the law, the suspicion that the decisions represent an exercise of *ex aequo et bono* rather than the implementation of legal rules of delimitation, will remain.

339. Schneider, *AJIL*, 1985, p.576.

340. Clain, *VJIL*, 1985, p.600.

341. *Guinea/Guinea-Bissau*, §90; "c'est la première fois qu'une juridiction se réfère aussi clairement à sa subjectivité," David, *AFDI*, 1985, p.365.

342. Wlosowicz, *CLJ*, 1985, p.344.

PART III
THE LAST DECADE, 1987-1997



8. Greek-Turkish Relations, 1987 to 1993: From Nadir to Zenith and Back Again

1. THE MARCH CRISIS

A new Aegean crisis erupted on March 26, 1987. The veteran of the former crisis, the survey vessel *Sismik-I*, was ordered to sail into disputed areas off the Greek islands of Samothrace and Thassos for oil exploration. "That the Turkish ship involved, the *Sismik-I*, was at the centre of the last crisis 11 years ago only sharpened the sense of *déjà vu*".¹ The reason for this Aegean affray was very strange and, under normal circumstances, no problem would have arisen. In 1985, a Canadian-led international consortium which was already exploiting the *Prinos* oil fields took the decision to start exploration research east of the island of Thassos, in an area called "Babouras." This area lies eight miles from the Greek coasts and two miles outside the Greek territorial sea.

According to the terms of the agreement that had been signed with the Greek government, the consortium had to commence prospecting for oil fields before 1 April 1987.² Greece, although it regarded the Bern Agreement as inoperative, was unwilling to give its permission for the research as it wished to avoid friction with Turkey. In early March 1987, the international consortium announced its plans to drill a promising new well in the Babouras area. The Greek government decided to nationalize the consortium in order to avoid any problems with Turkey.³

It was this very decision that led Turkey to send out *Sismik-I* in order to protect "its economic and political interests and rights,"⁴ because it interpreted this as a Greek move to start drilling for oil in the disputed seabed under international waters. Turkey also accused Athens on two grounds: first, the violation of the Bern Agreement which the Greek government considered to have lapsed, and, second, as acting contrary to a Greek reply given after a

1. *The Times* (London newspaper), 28 March 1987, leading article.

2. Kapsis, 1990, p.40.

3. See in general Bernitsas, 1987.

4. Guzel, Turkish government spokesman, in a news conference on 26 March 1987.

Turkish *note verbale* in March 1982 according to which the Greek government had promised not to do any research on the continental shelf of the Aegean.⁵ This second Turkish argument was misleading because the Greek government had said that it did not intend to proceed with any exploitation "à ce moment" without binding itself for the future.⁶

The research vessel was escorted by several Turkish warships, while most of the Turkish navy was already in the Aegean on full alert. Observers reported considerable military activity on the air bases in western Turkey, and the General Staff spokesman declared that they had taken "all necessary measures".⁷ Papandreou was facing a crisis which resembled that of 1976 when he had asked the conservative government to "sink the *Hora*." Nevertheless, pragmatism prevailed. One of the first moves of the Greek prime minister was to warn Turkey of Greece's readiness to protect its sovereign rights, by force if necessary, if *Sismik-I* carried out oil exploration near Greek islands. Then, he dispatched his foreign minister, Papoulias, to Sofia, Bulgaria, to see Todor Zhivkov and closed down the U.S. military base at Nea Makri for the duration of the crisis. Fresh troops were dispatched to the Greek islands, the entire Greek fleet was deployed in the Aegean and armored units moved to forward positions on the Thrace land frontier.

The crisis was defused when it appeared that a clash between the two countries would be unavoidable.⁸ The unprecedented Greek expression of mistrust towards Washington made NATO, Britain and the U.S. ready to intervene in order to avoid a damaging and demoralizing conflict on NATO's already vulnerable southeastern flank. Ozal, the Turkish prime minister, promised that the *Sismik-I* would only sail into disputed Aegean waters if the Greeks moved in to drill new oil wells.⁹ Meanwhile, and for the first time in the PASOK era, Greece invited Turkey to apply jointly to the International Court of Justice at The Hague for a settlement of their conflicting claims on the Aegean, but the Turkish government declined the invitation. The Greek proposal was conveyed to Nazmi Akiman, the Turkish ambassador in Athens,

5. Turkish *note verbale* to the secretary general of the U.N., dated 23 March 1987.

6. Kapsis, 1990, p.57.

7. See *The Times* (London newspaper), 27/28 March 1987.

8. See *The Economist*, 4 April 1987.

9. Interview with the World Service of the BBC and German Radio ZDF on 27 March 1987. According to Kapsis, the Turkish Ministry of Foreign Affairs wanted Greece to announce that it had stopped any exploration activity because of *force majeure*, 1990, p.104.

by Greek Deputy Foreign Minister Kapsis on 26 March 1987.¹⁰ On the last day of the crisis, the Turkish government granted new oil concessions to the Turkish Petroleum Company (TPAO) just outside the six-mile territorial sea of the islands of Samothrace, Lesbos, Chios, Lemnos and Agios Eustratios in the northern Aegean. These exploration permits were and are due to expire on 26 September 2003.¹¹

2. THREE QUESTIONS RELATED TO THE MARCH 1987 INCIDENT

Every time a Turkish research vessel goes into the Aegean and starts exploration over disputed areas of continental shelf and every time there are signs that Greece wants to start drilling in high seas, Greek and Turkish naval commanders begin swivelling their guns and the outside world is reminded how dangerous the Aegean remains. Although the idea of Greece and Turkey going to war over the Aegean continental shelf seems absurd to a non-Balkan, twice in the past, in 1976 and in 1987, an armed conflict almost broke out.

As long as the boundaries of the Aegean continental shelf are not delimited, the possibility of shelf-related activities triggering a crisis is very high. A number of questions as to the legal significance of these operations arises out of this situation. Are the two countries allowed to get involved in activities which can be considered as provocative? Can exploration activity create new rights over the continental shelf or deprive another state of its existing rights? Can compensation be claimed by the injured state for the abuse of its rights? Is there any obligation between the two countries resulting from any agreement to refrain from activities over the continental shelf? Some indications of the answers to these questions are provided by the Order of the ICJ in 1976 as well as by international practice in relation to agreements such as the Bern Agreement.

(a) Can Exploration Activity Create New Rights upon the Continental Shelf or Deprive another State of its Existing Rights?

A maritime delimitation of the continental shelf is normally achieved by means of a negotiated settlement or, in case of disagreement, is decided by a judicial or arbitral body. However, some states have delimited their conti-

10. Kapsis, 1990, p. 69.

11. See Question to the Greek Parliament by Manos, on 10 October 1988, *Eleftherotypia* (Athens newspaper), 11 October 1988.

mental shelves by domestic legislation and clearly this is the case between Greece and Turkey. Neither country has accepted the other's unilateral delimitation of the boundaries of the Aegean continental shelf. Nevertheless, Turkey has since conducted two explorations in the contested areas and, in 1987, it granted new oil concessions to the Turkish Petroleum Company (TPAO) just outside the six-mile territorial sea of the islands of Samothrace, Lesbos, Chios, Lemnos and Agios Eustratios in the northern Aegean.¹² The question is to what extent this activity can be creative of new rights over the continental shelf or, otherwise, if it has any legal significance at all.

When, before the Second World War, the sea-bed was considered by some authors as *res nullius*, activities like exploration research could be considered as part of an effective occupation and therefore able to confer to the coastal state rights over portions of the continental shelf.¹³ After the Second World War, the Geneva Convention on the Continental Shelf provided that coastal states do not possess unlimited sovereign rights over the continental shelf. The only rights recognized as appertaining to the coastal state were those required for the purposes of exploration and exploitation of the natural resources of the shelf as defined in Article 2 of the Convention.¹⁴ These rights were considered as independent of occupation or proclamation and as exclusive in the sense that, if the coastal state was not exploring or exploiting the continental shelf, no one could undertake these activities "or make a claim to the continental shelf, without the express consent of the coastal State."¹⁵

Article 2 of the Geneva Convention was one of the three articles which was considered by the ICJ in the *North Sea* cases as reflecting, or as crystallizing, received or at least emerging rules of customary international law and, as such, it was later repeated in Article 77 of the LOSC.¹⁶ The affirmation of the *ipso facto* and *ab initio* character of these rights, as well as the fact that their existence was considered as being independent of their exercise, was an indirect recognition that the conducting of research on a continental shelf by another state does not prejudice the existence of the rights of the coastal state.

12. See *supra*, p.239.

13. Hurst, *BYBIL*, 1923-24, p.43. See also O'Connell, 1982, pp.457-458.

14. See Article 68 of the ILC's draft articles, *YBILC*, Vol. II, pp.297-298. For the debates in UNCLOS I on Article 2, see Whiteman, *AJIL*, 1958, pp. 635-640.

15. Continental Shelf Convention, art. 2, (2,3). See also Gutteridge, *BYBIL*, 1959, pp.116-119.

16. *North Sea*, §63. Brown, 1984, pp.I.11 4-6.

When, in 1976, the Turkish survey vessel made its second appearance on the high seas of the Aegean, its exploration activity became the subject of two distinct views expressed by the Turkish government on different occasions. In a statement prior to the dispatch of *Sismik-1* to the Aegean, the Turkish minister of energy spoke about the protection of Turkish sovereign rights over the Aegean continental shelf.¹⁷ The Turkish government, on the contrary, stated in its observations to the ICJ in 1976 that exploration of the kind complained of by Greece could not "be regarded as involving any prejudice to the existence of any possible rights of Greece over continental shelf areas in the Aegean Sea" since the sovereign rights that may exist were not taken away or diminished by exploration.¹⁸

The ICJ, in its Order concerning the Greek request for the indication of interim measures of protection, regarded the areas where the activity of the research vessel was conducted as areas in dispute where both Greece and Turkey claimed rights of exploration and exploitation. The exploration activity as well as the unilateral granting of concessions in the disputed areas was considered *expressis verbis* as not creative of new rights or as being able to deprive the other state of any rights to which in law it may be entitled.¹⁹ Thus, whatever unilateral activity takes place over the disputed areas of the continental shelf, it does not create any new rights over it.

Six years later, in the *Tunisia-Libya* case, the Court, despite the statements made by the two parties, dismissed as insignificant certain partial maritime delimitations based on legislation mainly related to the fields of hydrocarbons and fishing which the two parties had established. It stated that "an attempt by a unilateral act to establish international maritime boundary lines regardless of the legal position of other States is contrary to recognized principles of international law."²⁰

Therefore, and since exploration research or granting of new oil exploitation licenses cannot be creative of new rights, these activities can be considered simply as efforts by way of domestic legislation to delimit unilaterally the continental shelf. In 1951, the ICJ in the *Fisheries* case said that the delimitation of the sea areas has an international aspect and, therefore, it cannot be dependent merely upon the will of the coastal state. The reason was that its

17. See *supra*, p.126.

18. *Aegean Sea Pleadings*, p.73.

19. *Aegean Sea*, 1976, §29.

20. *Tunisia-Libya*, §87.

validity "with regard to other States depends upon international law."²¹ In other words, the legal opposability of a unilateral delimitation to other states exists to the extent that the other states accept it, since "bilateralism is inherent in delimitation."²²

Turkey protested the Greek unilateral delimitation of the Aegean continental shelf in granting exploration licenses in several regions of the eastern Aegean in 1973 and 1974. In this way, it preserved its rights²³ and made known that it did not recognize the validity of the Greek acts. Turkish activities which took place in 1976 and 1987 can only be considered as a continuation of the rejection of the Greek delimitation of the continental shelf.

(b) Are the Two Countries Allowed to Get Involved in Activities Which Can Be Considered as "Provocative"?

It is, however, necessary to inquire whether, from a strictly legal point of view, these activities are really necessary as evidence of protest by one state to another, which establishes that it continues to object to acts performed by the latter. In order to ensure the effectiveness of the rejection of the acts of the other state, the original notification or demonstration of the claims and views of the protesting state is of utmost importance.²⁴ From the communication exchanged between Greece and Turkey, it is clear that categorical dissent was expressed by both states even in the period of the formative stages of the dispute over the Aegean continental shelf.²⁵ The "barring" of claims by lapse of time (extinctive prescription) between Greece and Turkey is clearly beyond question because their views in relation to the delimitation of the continental shelf are discussed every time the two countries come to the negotiating table.²⁶ Therefore, it is clear that acts such as exploration activity or the further granting of licenses in the contested areas are not necessary.

The question, then, is whether the two countries are allowed under international law to undertake activities which, since they do not have any legal significance, can be considered as provocative and as endangering peace and security in the area. International law requires that all disputes in the interna-

21. *Fisheries case*, ICJ Reports 1951, p.132

22. Weil, 1989, p.110.

23. Ralston, 1926, §215, 222, 660, 696.

24. *Ibid.*, §688-695.

25. See Annex to the application in the *Aegean Sea Pleadings*, pp.13-62.

26. See *supra*, pp.121-124, 160-163 and 171-172.

tional community must be settled in a peaceful way. This is imperative and is stipulated in the U.N. Charter as well as in the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States.²⁷ Greece and Turkey are bound by the obligation to settle their disputes by peaceful means in such a manner that international peace, security and justice are not endangered.

Acting within this spirit, the Security Council called upon the two states in 1976 "to avoid any incident which might lead to an aggravation of the situation."²⁸ The case was also brought in front of the ICJ in 1976, the basic role of which in the international community is to help pave the way for the friendly resolution of a dangerous situation.²⁹ The ICJ, based on Resolution 395/1976 and the obligations of the two states under the U.N. Charter, held that it was not necessary to decide whether it had independent power under Article 41 of its Statute to indicate interim measures the sole purpose of which were not to "aggravate the dispute and prejudice the maintenance of friendly relations between the two countries" as Greece had asked.³⁰

This decision was not without criticism from some members of the ICJ. Although the Court did not have the right to advise the two states "as to the various courses" they should follow³¹

it should, even while not indicating interim measures, have laid greater stress on, in particular, the need for restraint on the part of both States and the possible consequences of any deterioration or extension of the conflict. In going further than it has, the Court, with all the weight of its judicial office, could have made its own constructive, albeit indirect, contribution, helping to pave the way to the friendly resolution of a dangerous dispute. This would have been consonant with a basic role of the Court within the international community.³²

27. General Assembly Resolution 2625 (XXV). See also the Declaration on Principles Guiding Relations between Participating States adopted in Helsinki in 1975 as part of the final act of the Conference on Security and Cooperation in Europe where Greece and Turkey were participants, *ILM*, 1975, p. 1292.

28. Resolution 395/1976.

29. *Free Zones of the Upper Savoy and the District of Gex*, *PCIJ Series A*, No.22, p.13.

30. *Aegean Sea*, 1976, §17.

31. *Haya de la Torre*, *ICJ Reports*, 1951, p.83

32. *Aegean Sea*, 1976, Sep.Opinion Lachs, p. 20.

One of the reasons behind this decision of the ICJ was probably "its unwillingness to indicate interim measures that would then be disregarded by the State to whom they were addressed" as happened earlier in the *Nuclear Tests* case.³³

Nevertheless, and under these circumstances, the ICJ, although it did not condemn Turkish activity as creating an irreparable prejudice, did set aside and disapprove indirectly of any such activity in the future³⁴ by expressing the belief that:

It is not to be presumed that either State will fail to heed its obligations under the Charter of the United Nations or fail to heed the recommendations of the Security Council addressed to them with respect to their present dispute.³⁵

It was on the same grounds that the PCIJ in the *South Eastern Greenland* case avoided giving a decision on a similar question asked by Norway, since the moderation shown by both parties was sufficiently reassuring to make an order of interim protection unnecessary.³⁶ In a similar way, the Court in the *Aegean Sea* case expressed its confidence that the two countries would show moderation and refrain from any activity likely to create a dangerous situation.

(c) Can Compensation Be Claimed by the Injured State for the Abuse of Its Rights?

The ICJ in the *Aegean Sea* case in 1976 held, as has already been seen, that seismic exploration of the natural resources of the continental shelf of a coastal state without its consent undoubtedly raises "a question of infringement of the latter's exclusive right of exploration."³⁷ Thus, in the event of a judgment favorable to Greece, the exploration of disputed areas of the continental shelf by *Sismik-I* "might be capable of reparation by appropriate means."³⁸ As the Court in the judgment on the merits found that it was without jurisdiction in the case, the question of reparation for the exploration conducted was never discussed. Nevertheless, the question is: In the event that

33. Gray, 1987, p.73.

34. See *To Vima* (Athens newspaper), 28 October 1976.

35. *Aegean Sea*, 1976, §41.

36. *Legal Status of the South Eastern Greenland* case, PCIJ Series A/B, No.48.

37. *Aegean Sea*, 1976, §31.

38. *Ibid.*, 1976, §32.

the boundaries of the continental shelf are delimited at some stage in the future, does either of the two countries have the right to ask for compensation for the past activities of the other state over the then disputed continental shelf? Before going further, it should be noted that Turkey clearly believes that, even if damage were caused, this could be remedied by money.³⁹

In the *Mavromatis Jerusalem Concessions* case, the PCIJ explained the role of damages in international law by stating that

the essential principle contained in the actual notion of an illegal act is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would in all probability have existed if that act was not committed.⁴⁰

The first requirement for compensation is protest at the time of the occurrence of the wrong, since this has been held to prevent the running of time against the party claiming redress.⁴¹ However, it is doubtful whether, even under these circumstances, states can claim damages for direct injury.⁴² The ICJ, with the exception of the *Corfu Channel* case, has never awarded damages for direct injuries or even discussed this question.⁴³ Even U.N. resolutions which demanded that compensation be paid by the aggressor state to its victim have never actually led to payment being made.⁴⁴

In the disputed areas of the Aegean continental shelf, the only activities which could be considered as causing damage are those involving the conducting of exploration research by a vessel which, from the surface of the high seas, causes small explosions at intervals underwater. These explosions send sound waves to the sea-bed, enabling the vessel to obtain information concerning the geophysical structure of the sea-bed.⁴⁵ Under these circumstances, even if the doubtful rule according to which "a State is able to claim

39. Observations of the Turkish government, *Aegean Sea Pleadings*, p.74.

40. *Mavromatis Jerusalem Concessions*, PCIJ Series A, No. 5, 1925, p.46.

41. Ralston, 1926, §696.

42. Gray, 1987, pp.85-92. Brownlie, 1983, pp.236-238.

43. See the *Aerial Incident* case, ICJ Reports, 1959; the *Fisheries Jurisdiction (Germany v. Iceland)* case, ICJ Reports, 1974, p.175; the *U.S. Diplomatic and Consular Staff* case, ICJ Reports, 1980; and the case, concerning *Military and Paramilitary Activities in and against Nicaragua*, ICJ Reports, 1986.

44. Gray, 1987, p.89, p.94-95, fn.59-60. See also compensation paid by the ex-USSR to Canada for damage done by the disintegration of a Soviet satellite, *ILM*, 1979, p. 899; *ILM*, 1981, p. 689.

45. *Aegean Sea*, 1976, §30.

damages in international law for those injuries for which the same remedy would be available in municipal law"⁴⁶ is applied in the Aegean, there are very few chances that compensation in a form other than the handing over of the information obtained can be awarded.⁴⁷

3. THE EXCHANGE OF TALKING POINTS

(a) *The Content of the Talking Points*

The end of the "three-day crisis," as it was called, "was the turning point in Greek-Turkish relations during Papandreou's prime ministership."⁴⁸ The two countries reversed course and neared a rapprochement by starting a dialogue which was based upon a series of "talking points." The first talking point was given to the Greek Foreign Ministry by Mr. Akiman on 28 March 1987. Turkey informed Greece that, as long as Greece stopped all activities beyond the territorial sea, Turkey would conform to the Bern Agreement and Security Council Resolution 395. In its answer, which was given the same day, Greece once again asked Turkey to hold talks in order to draft the terms of the special agreement (*compromisum*) required to submit their dispute jointly to the International Court of Justice. During the period of the negotiations, Greece proposed a de facto moratorium between the two countries.

The communications exchanged between the two sides, thereafter, continued at the highest possible level, that is between the prime ministers of the two countries. As far as Greece was concerned, they were handled personally by Mr. Papandreou and his closest political advisers without any input from the Greek Ministry of Foreign Affairs. This situation was heavily criticized in Greece. It also raised questions as to the handling of the long-term foreign policy of Greece. It was argued that the whole incident was premeditated in order to force Greece to go to the negotiating table as a result of military pressure. Thus, the seriousness of the incident or even its occurrence was questioned. The fact is that Mr. Papandreou decided to set aside the "hard-liners"

46. Gray, 1987, p. 91.

47. See, e.g., the *Barcelona Traction* case where Belgium said that it would not ask for a remedy since its award would be practically and legally impossible, *ICJ Reports*, 1970.

48. Coufoudakis, [2], in *The Greek Socialist Experiment*, 1992, p.172.

in the diplomatic corps and even in his own party and proceeded to negotiate.⁴⁹

The first message of these secret communications⁵⁰ was sent by Turkey. It made specific reference to the Bern Agreement and asked Greece not to proceed with any acts outside its territorial waters. Turkey also expressed its willingness to settle the dispute through peaceful means and proposed negotiations with the aim of solving the differences peacefully by agreement. During the period of the negotiations, the two countries should abstain from any activities over the Aegean continental shelf which was specified as the area outside the territorial sea of each country. It is important to note that Turkey wanted to discuss, in addition to the delimitation of the continental shelf, all the issues between the two countries, although it did not insist on this proposal.

In its reply, the Greek government⁵¹ stated that, while both countries reserved their positions, they could start negotiations in order to closely examine the settlement of the delimitation of the continental shelf through "peaceful and legal means" and more specifically through the International Court of Justice. The interesting point is that Greece specified that any refraining from activities over the continental shelf was acceptable only if the subject of the negotiations was recourse to the ICJ. Finally, a general moratorium was suggested in order to improve relations and confidence between the two nations.

In its second Secret Talking Point,⁵² the Ankara government asked Greece to agree to bilateral negotiations on the delimitation of the continental shelf with the aim of achieving an "equitable solution" of the problem. These bilateral talks should be "without preconditions." The moratorium proposed

49. The best example of the setting aside of the hard-liners is given by Yannis Kapsis who stated that he ignored all communications between the two prime ministers, despite the fact that he was alternate minister of foreign affairs responsible *inter alia* for Greek-Turkish relations, 1990, pp.115-127.

50. The communication was in the form of "Secret Talking Points." It started with a Turkish Talking Point on 1 April 1987 and it continued until 30 September 1987 when the third and last Greek Talking Point was exchanged. The Secret Talking Points were published just before the Greek elections of November 1989 in the Athens newspaper *Pontiki*, 27 October 1989 and 3 November 1989.

51. 1st Greek Talking Point, 8 April 1987.

52. 2nd Turkish Talking Point, in the period between 9 April 1987 and 26 May 1987.

by Greece was accepted because it was necessary in order to create a propitious atmosphere between the two countries. Thus, it was obvious that the two states had to refrain from any acts or statements in their relations which could discredit the other party. Nevertheless, abstinence from any activity on the Aegean continental shelf was not agreed upon. This matter was closely connected with the negotiations, the conducting of which was not agreed upon due to the divergence of views of the two governments over the possibility of finding a solution either in the ICJ or directly between them.

In its reply, Greece insisted emphatically on a solution through peaceful and legal means.⁵³ The ICJ was considered by the Greek government as the only place where the differences between the two countries could be solved by an impartial and objective international organ. Greece also abandoned its requirement for the commencement of negotiations and the abstention from activities over the continental shelf. On the contrary, consent for a moratorium on hostile actions that might impede the progress between the two countries was expressed.

In the third and final Talking Point,⁵⁴ Turkey was more specific in its proposals. It spoke about an "equitable" settlement which could be achieved through a compromise on the rights and interests of each country in the Aegean "on the basis of equity." Such a settlement would serve to restore in the Aegean the status quo already established by international treaties. The problem of the delimitation of the continental shelf could be discussed as a separate issue, but a mutually accepted solution could not ignore the balance of the two countries in the Aegean. Thus, Turkey preferred to start negotiations on all the issues between the two countries. Bilateral negotiations could not be rejected before talks, although the two countries had divergent views on the delimitation. The Turkish government referred specifically to the moratorium. It pointed out that, in its second talking point, Greece did not mention anything about activities over the continental shelf. Therefore, it asked the Greek government to declare in a concrete manner that it would refrain from any acts on the continental shelf during the period of the negotiations. It also proposed a general moratorium on statements and activities which could be considered as provocative between the two states.

The Greek government refused to make any comments in response to the Turkish Talking Point since it considered it simply to be a repetition of al-

53. 2nd Greek Talking Point, 27 May 1987.

54. 3rd Turkish Talking Point, 22 July 1987.

ready known Turkish views. It insisted on a settlement achieved through peaceful and legal means and explained that it agreed with the need for a round of negotiations. If bilateral negotiations could not produce an agreement on the delimitation of the continental shelf, then the International Court of Justice should solve the dispute. In relation to a moratorium, Greece accepted that during the negotiation period the two countries should abstain from any activity over the continental shelf of the Aegean and from any act or statement in their bilateral relations which might prejudice the atmosphere between the two countries.⁵⁵

(b) Talking Points in International Law and Practice

Before examining closely the elements of the Talking Points, it is better to first investigate the extent that the obligations, if any, agreed upon in these points were binding upon the two countries. The dealings of states take a variety of forms. These forms are quite flexible because diplomacy is dynamic and moves with the times. Therefore, new forms of diplomatic correspondence are coming to the surface. Talking points are one such form.

A talking point is one of the variations that can be adopted by ordinary diplomatic correspondence. It has emerged quite recently in contemporary diplomatic practice. Because of its recent past, it has not yet acquired certain general characteristics and does not fall into any rigid classification. For these reasons, attention should be focused on the specific characteristics of the talking points which were exchanged between Greece and Turkey in the period after the March crisis.

According to the ICJ, "terminology is not a determinant factor as to the character of an international agreement or undertaking; in the practice of States...there exists a great variety of usage."⁵⁶ Therefore, and since the term talking points is not determinant of the substance of this diplomatic correspondence, it is necessary to consider whether these talking points are diplomatic notes, especially in light of the fact that they have all their characteristics. More specifically, they were used as one form of official communication between the heads of the two states. They were less formal than a *note verbale*, but they were used for the presentation of the position of each

55. 3rd Greek Talking Point, 30 September 1987.

56. *South West Africa cases*, ICJ Reports, 1962, p.331; according to O'Connell, "the name given to the instrument is immaterial," 1970, p.195, and fn.2.

country or in order to put a question.⁵⁷ Because they were characterized as "secret," it can be concluded that their content "doit être pris en sérieuse considération, très importante, mais qui n'est pas destiné à être rendu publique."⁵⁸ They were exchanged without any previous meeting and thus they did not record the positions of each country as they were expressed during talks. All these are the characteristics of the exchange of notes between the heads of the two states.

In international law and diplomatic practice, the exchange of notes is considered one of the instruments that can set out agreements between states. This has been accepted by the PCIJ which expressed the view that, "from the standpoint of the obligatory character of international engagements, it is well known that such engagement may be taken in the form of treaties, conventions, declarations, agreements, protocols or *exchange of notes*."⁵⁹ The ICJ, in 1973, considered that an exchange of notes between the governments of Iceland and the United Kingdom in 1961 embodied an agreement as to the jurisdiction of the Court.⁶⁰

International custom, as presented by various writers, suggests that the exchange of notes is one of the various forms that an international agreement can take.⁶¹ Indeed, at least one-third of the treaties registered with the U.N. are in the form of exchanges of notes.⁶² The advantage of the exchange of notes is its expeditious effect on the conclusion and execution of an agreement since its entry into force is usually without any need for ratification. The consent of states, expressed normally by their signatures, "s'effectuent par un échange de notes ou de lettres."⁶³ Moreover, international agreements can be more easily concluded without the complex machinery of a "formal" treaty. During the era of the League of Nations, diplomatic practice accepted, although never widely, exchanges of notes in the form of talking points.⁶⁴

57. Nickolson, 1939, p.246.

58. Pasquier cited by Satow, 1958, p. 62.

59. *Customs Regime between Germany and Austria*, PCIJ Series A/B, No. 41, p.47, emphasis added.

60. *Fisheries Jurisdiction case*, ICJ Reports, 1973, Jurisdiction of the Court, §9-24, pp.6-14.

61. Oppenheim, 1992, p.1210; McNair, 1961, p.24; Sen, 1979, p.456.

62. Oppenheim, 1992, fn.10, §586. See also Blix and Emerson, 1973, pp.311,318-320.

63. Nguyen, Dailler, Pellet, 1992, p.141.

64. Weinstein, *BYBIL*, 1952, p.206.

The exchange of notes or talking points has a clear analogy to "offer and acceptance" in municipal law. One state makes an offer and the other state either accepts or makes a counteroffer, for there may be a series of notes before agreement is reached. The two notes taken together constitute an agreement and fall within the definition of a "treaty" according to the Vienna Convention.⁶⁵ Clearly, this was the case with the exchange of the Greek and Turkish talking points.

The "offer-counteroffer and acceptance" procedure was used in relation to the following issues: (a) the subject of the negotiations, (b) the refraining from activities over the continental shelf, and (c) a more general moratorium between the two countries. As to the obligations binding on the two countries in relation to these issues, the following remarks can be made. From what is already known,⁶⁶ the general moratorium between the two countries was the only subject on which both leaders agreed from the beginning. The need for this moratorium was the creation of a better climate between the two nations. The subject of the negotiations was quite controversial due to the divergence of views as to the recourse to the ICJ. However, it can be concluded from the final Greek Talking Point that it was agreed that negotiations would be about the delimitation of the Aegean continental shelf according to peaceful [*sic*] and legal means.

As regards the refraining from any activities on the continental shelf, it should be noted that it is generally believed in Greece that Papandreou agreed not to proceed with any exploration or exploitation activity outside Greek territorial waters. Nevertheless, a careful reading of the exchange of the Talking Points shows without a doubt that Greece never accepted any obligation other than the one that had been agreed between the two countries in the Bern Agreement, namely, to refrain from drilling on the continental shelf during the period of the negotiations. The fact that the initial Turkish proposal that both countries shall refrain from activities "outside the territorial waters" of the two countries was rephrased by the Greek government to relate to "the areas of continental shelf" shows that this obligation applied only to the disputed areas of the continental shelf and not to the whole Aegean sea-bed.⁶⁷

65. See Oppenheim, 1992, p.1210; Weinstein, p.205.

66. It is unknown if any other talking points were exchanged between the two prime ministers because, in July 1989, Andreas Papandreou refused to give the authentic documents held in his personal archives to the June 1989 government.

67. See Dipla, 1992 p.16.

Thus, with the exchange of the Talking Points, the two leaders undertook the above-mentioned obligations. In cases like this, where existing traditional enmity between the two countries prevents the conclusion of a treaty with the complex machinery and formalities that necessarily have to be followed, this exchange of talking points was a very good opportunity for the two countries to undertake important obligations without having necessarily to make them public. As regards the authority of the two prime ministers to conclude agreements, they are regarded *ipso facto* as competent *ex officio* to do so on behalf of the two states. As to the date that the agreement concluded by the two prime ministers took effect, since no express provision was made, this is probably the date of the note which completed the exchange, namely, 30 September 1987.⁶⁸

At this point, it should be mentioned that, according to one view, the dialogue between the two governments was in the form of memoranda.⁶⁹ An international agreement can be established by a memorandum since even an unsigned and uninitialled document may constitute an international agreement.⁷⁰ However, even if the exchange of the secret talking points cannot be considered to be equivalent to the exchange of notes, the actual communication was not without any legal significance. The views expressed by each party, as well as the topics on which an agreement was reached, can be considered as giving the right to each state to claim in the future a *venire contra factum proprio*.

In conclusion, it can be said that, with the exception of the general moratorium, all the other obligations agreed upon by the two leaders were the same as those of the Bern Agreement. This is an important element which strengthens the view that the Bern Agreement has lost its binding force. The conclusion of the 1987 agreement shows that there was no longer any existing obligation on the part of the two countries to refrain from any activities over the continental shelf. Otherwise, the two states would have simply reconfirmed the validity of the Bern Agreement as is the case with previous treaties whose validity has or might have become doubtful.⁷¹

68. Weinstein, *BYBIL*, 1952, p.210.

69. Laipson, 1987, in *The Aegean Issues: Problems and Prospects*, p.28.

70. Temple of Preah Vihear, *ICJ Reports*, 1961, p.31.

71. Oppenheim, 1992, p.1312, §659.

(c) *The Substance of the Talking Points*

The exchange of talking points made it less likely that an incident would occur that could lead to war. Both countries agreed about the need to create a climate conducive to the resolution of mutual problems. In relation to the substance of the matter, it was apparent that Turkey wanted to have an established framework for bilateral discussions. Thus, it tried to reestablish the pre-1981 situation and to have an assurance that the Bern Agreement was still applicable between the two countries. It also emphasized that the problem should be settled through bilateral negotiations in the spirit of Security Council Resolution 395/76.⁷²

For the first time, Turkey specifically expressed its willingness to start negotiations on all the issues between the two countries and not only on the continental shelf delimitation. It also mentioned that, even if a solution were to be reached on the delimitation issue, this could not ignore the balance between the two countries. The grounds for a proposal for a package deal agreement between the two countries were set.

The basis for discussion of the delimitation of the continental shelf was no longer the natural prolongation criterion as had been the case in the past. In 1987, the situation in the field of continental shelf delimitation was completely different than it had been seven years before. The physical– geological or geomorphological– natural prolongation of the continental shelf diverged from the natural prolongation in a legal sense in the *Tunisia-Libya* case. “The legal concept, while it derived from the natural phenomenon, pursued its own development.”⁷³ In the *Gulf of Maine* case, this about-turn from the *North Sea* case was reconfirmed.

It should not be forgotten...that legal title to certain maritime or submarine areas is always and exclusively the effect of a legal operation. The same is true of the boundary of the extent of the title. That boundary results from a rule of law, and not from any intrinsic merit in the purely physical fact.⁷⁴

72. In a press conference on 30 March 1987, Turgut Ozal explained that the term “peaceful means” is general and could mean the International Court of Justice or something else. Soltarides, 1988, p.56.

73. *Tunisia-Libya*, §42.

74. *Gulf of Maine*, §103.

In the *Malta-Libya* case, the break between the concept of natural prolongation and the continental shelf was complete for distances less than 200 miles from the coasts.

...at least in so far as those areas are situated at a distance of under 200 miles from the coasts in question title depends solely on the distance from the coasts of the claimant States of any areas of seabed claimed by way of continental shelf, and the geological or geomorphological characteristics of those areas are completely immaterial.⁷⁵

Thus, natural prolongation as a criterion for the delimitation of the continental shelf has become a rather weak argument. As a result, Turkey emphatically used the words "equity," "equitable solution," "equitable settlement," and "basis of equity." Equity had already emerged as an autonomous concept in delimitations and it was much more convenient.

Greece, on the other hand, insisted on recourse to the ICJ and did not accept the Bern Agreement as still operative. Its basis for abstaining from any activity over the continental shelf was a fresh moratorium between the two countries. Also, more weight was put on a solution based on legal means. As a final remark, it can be said that the exchange of these diplomatic notes did not alter in substance the position of either country on the division of the continental shelf beneath the Aegean. From the other point of view, it was clear that the two governments were facing a simple dilemma: to continue talks without any progress since the two countries were locked into their views, or to take a step further and start a new era in Greek-Turkish relations.

4. THE DAVOS MEETING

The two prime ministers preferred the second solution. It is unknown whether the secret correspondence continued between September 1987 and January 1988.⁷⁶ Nevertheless, the Talking Points had been warm in tone and precipitated a thaw that allowed the two governments to make the surprise

75. *Libya/Malta*, §39.

76. The Greek Ministry of Foreign Affairs does not have any copies of these Talking Points after September 1987. According to the well-informed on foreign affairs matters, *Pontiki*, before the Davos summit, no further talking point was sent to Greece, after the last Greek Talking Point of 30 September 1987; *Pontiki* (Athens newspaper), 5 February 1988. See different view by the *Economist*, 6 February 1988, pp.43-44.

announcement that the two prime ministers planned to meet each other during the World Economic Forum at Davos, Switzerland, in January 1988. The meeting in Davos took place in quite amicable circumstances in contrast to the previous tension between the two countries. Mr. Papandreou's attitude was quite remarkable when compared with the period when he was in the opposition, when he was continuously urging the governments of Karamanlis to take a harder line. Turgut Ozal, who had just been reelected for a second term as Turkey's prime minister, although facing very tough opposition in parliament, was eager to make Turkey a full member of the EEC as soon as possible and, thus, was very willing to negotiate and agree on some confidence building measures in order to promote detente.

Nevertheless, the meeting was never likely to produce dramatic results in Greek-Turkish relations and, moreover, prospects for the summit turned sour after three events which threatened the rapprochement procedure. Twenty days before the meeting, Turkey published a map which showed the area of navigational control and wreck rescue, which coincided with NOTAM 714's area near the Aegean median line.⁷⁷ The Greek government lodged a protest with Turkey on 13 January 1988 and claimed that the boundaries of the area had already been established by the Hamburg Convention.⁷⁸ The government in Ankara dismissed this protest as "a distortion of the reality."⁷⁹ Also, on 23 January, there was an outbreak of violence involving the Muslim minority in Western Thrace when about 1,500 members of the minority clashed with police.⁸⁰ Finally, three days before the meeting, Greeks were irritated when the Turkish vessel *Sismik-I* sailed into the Aegean, although the official explanation was that it was on a pollution monitoring mission.⁸¹ However, both sides seemed to want to play down these incidents.

Before the meeting, Greek sources said that Papandreou intended to put forward *inter alia* a proposal to refer the problem of the Aegean continental

77. Soltarides, 1988, p.102.

78. Statement made by the Greek spokesman, 13 January 1988; International Convention on Maritime Search and Rescue, Hamburg, 1979, *IMLC*, pp.1670-1693; *EtK*, Law 1844/1989; see *infra*, fn.121.

79. See *Eleftherotypia* (Athens newspaper), 18 January 1988.

80. Soltarides, 1988, pp.73-96. Papandreou said after the meeting that "the position of both sides is that this was an act of provocation designed to harm our meeting," *The Times*, 1 February 1988.

81. Statement of the Turkish spokesman, 28 January 1988.

shelf to the ICJ.⁸² In Turkey, politicians and journalists warned Ozal to follow a tough line on the Aegean continental shelf issue.⁸³ However, during the meeting, the two prime ministers decided to put a hold on painful issues such as the Aegean dispute until the two sides could consider them more coolly. As Mr. Papandreou said after the meeting, "we solved no problems" but we agreed to have "no war."⁸⁴ In the joint press communiqué issued following the meeting,⁸⁵ the two leaders expressed their optimism and agreed that a crisis similar to that of March 1987 should never be repeated. They also agreed on an elaborated plan of "confidence building measures." The key decision for their quest for peaceful solutions, however, was the establishment of a joint committee at ambassadorial level to define the problem areas, "explore the possibilities of closing the gap and move towards lasting solutions, the progress of which will be reviewed."

The outcome of the meeting has aroused greater enthusiasm in Turkey⁸⁶ than in Greece⁸⁷ where there was a lot of criticism and where the Ministry of Foreign Affairs and informed opinion had clearly hoped for more. It was not only the fact that Greece had vowed in the past that there would never be a meeting until Turkey removed its army of occupation from Cyprus. The general feeling was that Ozal had achieved his diplomatic objective of removing obstacles to eventual Turkish membership in the European Community,⁸⁸ without conceding anything in return. The phraseology of the Greek prime minister concerning the fact that the taking of the dispute over the Aegean continental shelf to the International Court of Justice was "put to one side" created both skepticism and stronger criticism at home. Moreover, the fact that the joint committee was given *carte blanche* to define all the problem areas was damaging to long-established Greek positions over issues such as

82. *The Times* (London newspaper), 30 January 1988.

83. See *Milliyet* (Istanbul newspaper), article by Ali Birand, 30 January 1988; *Hurriyet* (Istanbul newspaper), statements by Demirel and Ecevit, 30 January 1988.

84. *The Times* (London newspaper), 1 February 1988; see also Yalourides, 1988, pp.130-131.

85. For the Davos communiqué, see *The Week in Review*, Greek Embassy Press and Information Service, Washington D.C., 1 February 1988, No. 4/88.

86. Ozal has privately urged the Turkish press not to call the summit a "Turkish victory," *The Economist*, 6 February 1988, p.43. See also the Turkish newspapers, *Cumhuriyet*, *Milliyet*, *Gunaidin*, 3 February 1988.

87. For a general evaluation of the Davos summit and its impact on Greek-Turkish relations, see McDonald, [2], *The World Today*, 1988, pp.99-102.

88. Kramer, *EA*, 1987, pp.605-614.

the FIR of Athens, the Muslim and Greek minorities⁸⁹ and the militarization of the Aegean islands.⁹⁰ This impression was intensified when it was later revealed that the Davos communiqué was drafted by Turkey and that later in 1988 Papandreou himself described this communiqué as "shameful."⁹¹

The first results of the Davos summit were evidenced in February 1988 when the two foreign ministers met in Athens and formally pledged to respect each other's sovereignty as well as their right to use the seas and international airspace in the Aegean. In a memorandum of understanding, it was decided that military exercises in the Aegean would be avoided during the summer tourist season, that they should not interfere with civilian traffic and that they should respect international regulations. This was mainly a Turkish compromise, since Turkey was violating Greek airspace almost every day. Thus, the government of Turkey, without renouncing its position in relation to the airspace zone around the Greek islands, promised to refrain from asserting this claim during the peak tourist season, since this was damaging for both countries.⁹² Nevertheless, almost every day during the period after the Davos meeting and up until June, there was news of Turkish violations of Greek airspace.⁹³

5. THE PERIOD AFTER DAVOS

The next meeting of the two prime ministers was at the NATO Summit in Brussels in early March 1988. At this meeting, the two leaders decided "that the two countries [would] abstain from any action or declaration which could undermine the spirit of Davos."⁹⁴ This obligation was clearly a kind of moratorium between the two countries. Despite Turkish objections,⁹⁵ the term "action" was also included, since the Greek government claimed that Turkish jets continued violating the Greek national airspace. There are some indica-

89. See Meynardus, *Orient*, 1985, pp.48-61.

90. See, e.g., *Milliyet* (Istanbul newspaper), 4 February 1988, "Six Problems Between Greece and Turkey."

91. Kapsis, 1990, pp.133-136.

92. *The Times* (London newspaper), 28 February 1988.

93. Veremis, *The Middle East*, 1998, p.20.

94. Joint Press Communiqué, Brussels, 4 March 1988; *Yearbook of 1988*, ELIAMEP.

95. Objections raised by Kandemir, Under-Secretary of the Turkish Foreign Affairs Ministry, Kapsis, 1990, p.139.

tions that the two leaders also discussed the placement of the military command of the Fourth Turkish Army at Izmir but without result.⁹⁶

At this meeting, the two governments also decided to establish a "sub-committee of the Political Committee" consisting of diplomats and military experts. The purpose of this committee was to examine issues related to Aegean airspace. The experts met in March in Athens. According to the records of the meeting, the Turkish delegation proposed that all military aircraft flying over the Aegean should notify the military authorities of the two countries regarding their flight plans and positions. The Greek experts dismissed this proposal which aimed to establish Turkish control over the whole of the Aegean, and the talks collapsed.

The next meeting between the two countries was in Athens when the Greek-Turkish Political Committee was convened for the first time from 24 to 26 May 1988, under the co-chairmanship of the two foreign affairs ministers. Before the meeting, the Greek side expressed its willingness to discuss any subjects relating to sovereignty and the territorial integrity of each country. It also explained that each country reserved the right to refuse to discuss any subject.⁹⁷ The purpose of the Greek explanations was to limit the possible topics of discussion and to focus attention upon the delimitation of the continental shelf of the Aegean. During the meeting, some subordinate matters were discussed, such as visa requirements for diplomatic passports, drug smuggling, terrorism, tourism and economic cooperation.

Nevertheless, the Greek diplomats, in order to ensure agreement on these issues, wanted to have *ad referendum* some specific binding terms in relation to the status quo in the Aegean. Thus, they proposed some measures for creating confidence, such as the recognition of the free use of the high seas and the international airspace of the Aegean, and respect for the sovereignty, territorial integrity and "internal laws" of each country. This latter reference to internal legislation was not accepted by the Turkish side since its acceptance would have been tantamount to the recognition of the air zones in the Aegean. Turkey proposed respect for "the interests" of each country. Equally, the Greek side rejected this proposal as "vague, subjective, ambiguous and not having any meaning in legal terminology." Another point of

96. See Turkish Press, 5/6 March 1988; *Milliyet* (Istanbul newspaper), "Talks about the Aegean Army," Soltarides, 1998 pp.193-194.

97. Greek Ministry of Foreign Affairs, tel. 359/AΣ88, 10 May 1988, Kapsis, 1990, p.150.

disagreement was the legal nature of the measures to be taken. Yilmaz, the Turkish foreign minister, proposed that the text to be adopted should be of a non-binding character, indicative of the good will of the two sides. The Greek delegation saw the confidence building measures as a form of coded expression of the attitude of the two countries towards each other. On the second day of the talks, the Greek side insisted that the only international dispute in the Aegean was the delimitation of the continental shelf. Turkey continued to maintain that the international dispute involved the airspace over the Aegean as well.⁹⁸

The bilateral talks were very close to collapse. This likelihood and the fact that it would not be welcomed by the public opinion of the two countries forced the two delegations to compromise. The "Memorandum of Understanding on Confidence-Building Measures" was signed in Athens on 27 May 1988. According to its terms

1. Both parties recognise the obligation to respect the sovereignty and territorial integrity of each other and their rights to use the high seas and international airspace of the Aegean.
2. In conducting national military activities in the high seas and the international airspace, the two parties shall endeavour to avoid interfering with smooth shipping and air traffic as ensured in accordance with international instruments, rules and regulations. This would contribute to the elimination of unwarranted sources of tension and reducing the risks of collision.
3. The two parties have agreed that the planning and the conduct of national military exercises in the high seas and the international airspace which require the promulgation of a NOTAM or any other notification or warning should be carried out in such a way as to avoid also to the maximum extent possible the following:
 - a. the isolation of certain areas
 - b. the blocking of exercise areas for long periods of time
 - c. their conduct during the tourist peak period (1 July-1 September for 1988) and main national and religious holidays.

It is understood that the planning and execution of all national and military activities will be carried out in accordance with the existing international rules, regulations and procedures.⁹⁹

98. 24 Hores (Athens newspaper), 29 May 1988.

99. 27 May 1988, *Yearbook of 1988*, ELIAMEP, p.193.

The third term of the Memorandum was added after a Greek request since, during 1987 and 1988, the Turkish navy conducted military exercises in large areas of the high seas for prolonged periods of time and thus it isolated the Greek islands of Lemnos, Lesbos and Chios.¹⁰⁰ Although during the period of the May talks there had been news of Turkish jets violating Greek national airspace over the island of Psara in the northern Aegean,¹⁰¹ for a long period after this incident no other violations took place.¹⁰² In general, however, this memorandum did nothing except repeat international obligations that all countries have to respect.¹⁰³

6. THE ATHENS SUMMIT AND THE DEATH OF THE DAVOS SPIRIT

The Davos spirit culminated in Prime Minister Ozal's visit to Athens on 13 June 1988. This was the first visit to Greece by a Turkish prime minister in thirty-six years. In this meeting, the delimitation of the continental shelf of the Aegean was seen as the acid test of Greek-Turkish relations. The atmosphere was not very good from the beginning. In his official speech, Ozal mentioned coastal states' rights and interests in the Aegean, although the term interests was not accepted by Greece in the Memorandum of 27 May.¹⁰⁴ During the talks, it seems that the Turkish delegation described the 1923 Lausanne Treaty, and consequently the situation that had persisted in the Aegean after 1923, as obsolete and called upon Greece to make some compromises in relation to its sovereign rights.¹⁰⁵ The Greek delegation found this proposal completely unacceptable and thus the negotiations continued on issues such as economic, industrial and technical cooperation, mutual tax exemptions, tourism and transport. Both prime ministers sought to dispel pessimism about their meetings. They said the fact that they had met and talked and would continue talking was progress.¹⁰⁶ In the Joint Press Communiqué after the meeting, the two prime ministers recognized indirectly the deadlock in the negotiations:

100. Kapsis, 1990, p.154.

101. *Ta Nea* (Athens newspaper), 29 May 1988.

102. Kapsis, 1990, p.154.

103. See comments of Krateros, *24 Hores* (Athens newspaper), 11 June 1988.

104. *Ta Nea* (Athens newspaper), 14 June 1988; Kapsis, 1990, p.157.

105. Kapsis, 1990, p.164.

106. *Independent* (London newspaper), 16 June 1988.

The two Prime Ministers, fully aware that the process they have initiated at Davos and in Brussels requires patience, mutual respect, good faith and political determination, reiterated their commitment to further promote the climate of understanding between the Greek and Turkish nations. As a guidance to the future work to be conducted by the two Committees, they instructed their co-chairmen to continue their work in accordance with the relevant provisions of the Davos and Brussels Communiqués.¹⁰⁷

This second summit between Papandreou and Ozal failed to take the Davos initiative any further.¹⁰⁸ Moreover, the initiatives taken personally by Papandreou during this period, the hastily organized summits, and the fact that no progress was taking place in the principal issues between the two countries resulted in the resignation of senior career diplomats from the Greek diplomatic corps. These diplomats wanted to express their concern about the impact of these initiatives on long-term policies of Turkey towards the Hellenic world.¹⁰⁹ It should be stressed at this point that, during the period after the Davos Summit in 1988, the Greek Ministry of Foreign Affairs tried hard to reset the legal perspectives of the Aegean question and to narrow the dispute on the continental shelf delimitation.

In July following the Athens meeting, Yilmaz, the Turkish foreign minister, made a proposal concerning the issues upon which the future work of the Committee should be focused. These were divided into two subjects. The first was the situation of the Greek and Muslim minorities in the two countries and the second was the status quo in the Aegean Sea. The second subject included (a) the territorial sea, (b) the international airspace, (c) the militarization of the islands, and (d) the delimitation of the continental shelf. If Greece could not agree to discuss all these subjects, according to Yilmaz's proposal, the two countries could make a public announcement saying that among "the issues related with the Aegean sea, the two sides decided to establish a committee to examine the delimitation of the continental shelf." The Greek side responded that subjects relevant to the sovereign rights of each

107. Joint Press Communiqué, 15 June 1988, *Yearbook of 1988*, ELIAMEP, p.194.

108. Meynardus, *EA*, 1988, pp.403-411.

109. Dountas, ambassador to the USSR, one of the most informed and consistent analysts of Greek-Turkish relations; Stoforopoulos, ambassador in Cyprus; Serbos, head of the Greek-Turkish section of the Greek Ministry of Foreign Affairs.

country could not be discussed and thus implied that the only issue was the delimitation of the continental shelf.¹¹⁰

In the meantime, in the Aegean, the two countries started exploration research, Greece off the island of Thassos¹¹¹ and Turkey at the entrance of the Dardanelles,¹¹² both in the northern Aegean. By the middle of July, Turkish jets again violated Greek national airspace and regulations of international air traffic in the Athens FIR.¹¹³ By the end of August, the Turkish research vessel *Piri Reis*, while in Greek territorial waters in the narrow passage between Turkey and the Greek island of Samos, violated the rules of innocent passage by conducting exploration research.¹¹⁴ The climate of mutual confidence had started to dissolve. It is important to note that after July 1988 Greek Prime Minister Andreas Papandreou started losing his credibility as a negotiator because of his health and personal problems.

The Greek and Turkish Political Committee held its second meeting in Ankara and Istanbul on 5-8 September 1988 in an unfriendly atmosphere because of the recent violations of the agreements to refrain from any provocative acts. The two sides agreed to refrain during the ongoing dialogue from acts and statements which could have adverse effects on the climate of confidence. On the first day of the meeting, the Turkish foreign minister described the problems in the Aegean Sea as interrelated and thus implied that he did not wish to only discuss the delimitation of the continental shelf. In the face of Greek reluctance to discuss these subjects, Turkish proposals were focused mainly on the military exercises in the Aegean.¹¹⁵ During the final day of the meeting, the two countries adopted a document containing "Guidelines for the Prevention of Accidents and Incidents on the High Seas and International Airspace." The most important of these guidelines were the following:

1. The military and other activities carried out by the ships and aircraft of both countries on the high seas and international airspace will be conducted in accordance with international law and international custom, instruments, rules, regulations and procedures...

110. Kapsis, 1990, p.164.

111. *To Vima* (Athens newspaper), 12 June 1988, the Greek Oil company (ΑΕΠ) and the Consortium Denison.

112. *Kathimerini* (Athens newspaper), 5 July 1988, the Turkish company T-RAO.

113. Greek *notes verbales* for violations on the 15 July 1988, 18 July 1988, 21 July 1988, 3 August 1988, 4 August 1988.

114. *Kathimerini* (Athens newspaper), 30 August 1988.

115. Kapsis, 1990, p.169.

2.A. The naval units of the parties...a. will refrain from acts of harassment of each other while operating in the high seas in accordance with international law and custom.

b. They will act in full conformity with international law, rules, regulations and procedures...

c. Naval units engaged in the surveillance of ships of the other party during firing operations and other military activities in accordance with international law shall maintain a position which would not hamper their smooth conduct.

B. The air force units in conducting military activities...a. will act in full conformity with international law and in particular international custom, instruments, rules and procedures.

b. Pilots of the aircraft of the parties shall display utmost caution when in proximity of aircraft of the other party and shall not manoeuvre or react in a manner that would be hazardous to the safety or flight and/or affect the conduct of the mission of the aircraft.¹¹⁶

The specific reference to international custom was undoubtedly favorable towards Greek claims concerning the extent of the national airspace since one of the basic Greek arguments is that it has become part of customary law of particular application in the Aegean.¹¹⁷ The Turkish press strongly criticized this article,¹¹⁸ and it is not known why the Turkish delegation accepted it since the Greek side did not make any compromise in relation to its views on the whole spectrum of Greek-Turkish relations.

This was the last meeting between the two countries during the first period of the PASOK era. Since the Greek prime minister's health was in a critical situation, an official visit to Ankara planned for October 1988 was postponed. The political cooperation committees did not meet again, although it was agreed that a meeting would take place during the first half of 1989. The relations between the two countries deteriorated after October 1988. The conducting of Turkish military exercises in the high seas of the northern Aegean in late October seriously obstructed the sea transport between the islands of Lesbos and Chios and the Greek mainland, an event with obvious psychological significance for the Greek inhabitants of the islands who felt

116. *Yearbook of 1988*, ELIAMEP, p.197.

117. See *supra*, pp.45-47.

118. *Hurriyet, Terzuman* (Turkish newspapers), 9 July 1988.

isolated from the Greek mainland.¹¹⁹ On 2 November 1988, the Greek spokesman answered the proposal of the Turkish Ministry of Foreign Affairs to define the problem areas between the two countries by reiterating that the only problem was the legal problem of the delimitation of the continental shelf of the eastern Aegean.¹²⁰

7. TWO UNILATERAL ACTS WITH DIFFERENT AIMS

By the end of 1988, two unilateral acts, one by Greece and one by Turkey, showed that bilateral relations had become sour again. Whereas the Turkish act aimed to alter the existing status quo in the Aegean, the Greek act wanted to find further justification for it.

On 11 November 1988, the Turkish Cabinet made a decision concerning navigation and safety at sea.¹²¹ Since 1944, Greece had had the overall co-ordination role for search and rescue in all the areas of the high seas. This responsibility was reaffirmed in Regulation 15 of chapter V of SOLAS 1960.¹²² The responsible U.N. agency, IMCO, had been informed in 1975 of Greece's role in the region as well as of the search and rescue facilities of Greece in the area.¹²³ At the time of the signing of the Hamburg Convention on Maritime Search and Rescue in 1979,¹²⁴ Greece made a reservation in connection with the Aegean search and rescue region. According to this reservation, "Greece has been continuously carrying out within it search and rescue operations."¹²⁵

Despite the fact that the Hamburg Convention expressly states that "the delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between States,"¹²⁶ the Turkish Cabinet

119. Between 25-27 October and 30-31 October 1988; *Kathimerini* (Athens newspaper), 19 October 1988.

120. *Kathimerini* (Athens newspaper), 2 November 1988; *Pontiki* (Athens newspaper), 4 November 1988, "The Crisis of the Davos Spirit."

121. Decision, 11 November 1988; published in *OfTuGaz*, 7 January 1989. See *supra*, fn.78.

122. International Convention for Safety of Life at Sea, 1960, *Conventions Maritimes Internationales*, pp.326-332.

123. Document 44/7-1-1975, Greek Ministry of Mercantile Marine.

124. International Convention on Maritime Search and Rescue, Hamburg, 1979, *IMLC*, pp.1670-1693.

125. *IMLC*, Vol. 2, p.1672.

126. Hamburg Convention, art.2.1.7.

tried to change the limits of this region and to adjust the extent of Turkish responsibility in the middle part of the Aegean.¹²⁷ The publication of the map showing the limits of the rescue area was reminiscent in many respects of the Turkish continental shelf maps of 1973 and 1974.¹²⁸ It has to be recalled that in the *Gulf of Maine* case the United States had used similar arguments on navigation and safety, but the Court declined to express any opinion. On 12 January 1989, Turkey tried to establish in practice its control in the area between Lemnos, Lesbos and Skyros in the northern Aegean but failed.¹²⁹

The second act came from Greece and was connected with its national airspace. In 1988, the new Greek Code of Air Law considered the national airspace to be one of the component parts of the territory of the Greek state.¹³⁰ The Greek approach was interesting because it was relevant to the question of what elements constitute a state territory. There is no disagreement that the land territory consists, in the first place, of the land in which the internal waters and territorial sea must be added.¹³¹ In the *Military and Paramilitary Activities* case, the ICJ said that state sovereignty applies to the territorial waters as well as the airspace above its territory.¹³² But what is the nature of the airspace? Can it be characterized as an element strictly connected with the sub-jacent territories, or is it to be regarded as another regime, separated and equal in rank with the territorial sea and the land territory?

The Paris Convention relating to the Regulation of the Aerial Navigation of 1919 as well as the Chicago Convention of 1944 defined the airspace as the area above the state territory, which territory includes the land and the territorial sea. Nevertheless, the two conventions did not establish "aucune règle relative à la *délimitation latérale* de l'espace aérien."¹³³ The same approach was followed in Article 2 of the Geneva Convention on the Territorial Sea and Contiguous Zone, which states that the sovereignty of a coastal state "extends to the air space over the territorial sea...." This lacuna of law in relation to the lateral delimitation of the national airspace, can be filled with the

127. See *OfTuGaz*, 17 January 1989.

128. Kartalis, in *Greek Problems in the Air*, 1989, p.85.

129. On this incident, see Hassapopoulos, in *Greek Problems in the Air*, 1989, pp.87-89.

130. See *supra*, p.25, fn.114.

131. Oppenheim, 1992, pp.572-573; Nguyen, Dailler, Pellet, 1992, p.401.

132. *ICJ Reports*, 1986, §212.

133. Nguyen, Dailler, Pellet, 1992, p.1124.

fixing of the airspace limits with reference to and in accordance with the terrestrial frontiers and the exterior limits of the territorial sea.¹³⁴

However, the LOSC changed this approach.¹³⁵ Although it accepted verbatim the Geneva Convention provision concerning the connection of the national airspace with the coastal state's sovereignty over the territorial sea,¹³⁶ it introduced a new area where sovereignty over the national airspace can be exercised. Thus, according to Article 49, the sovereignty of an archipelagic state "extends to the air space over the archipelagic waters...." Therefore, international law accepts, despite the Paris and the Chicago conventions, that national airspace exists over an area which cannot be characterized as land or territorial waters.¹³⁷

Under these circumstances, the approach taken by the Greek state with regard to the Code of Air Law does not seem detached from international law. Simultaneously, there cannot be any doubt that it aimed to provide further justification for the status of the Greek national airspace as a regime which is separate from the land and the territorial sea and, therefore, capable of a different delimitation than that of the maritime and terrestrial frontiers of the state. In any case, these two acts clearly signified the end of the rapprochement period. The aims of the two states had not changed at all.

8. THE TERMINATION OF THE NEGOTIATIONS

During 1989, the "Davos spirit" passed away. This period was marked by the decision of the Greek prime minister to exclude the delimitation of the continental shelf from the agenda between the two countries for a short but indefinite period in order to create a better environment for the negotiations. Turkey completely refused to discuss the continental shelf delimitation although the Greek side pushed hard for it. On the contrary, all the problems that the Turkish side considered as constituting the whole complex of Greek-Turkish relations were put on the table of the negotiations. The new element was that the Turkish side brought into question the treatment of the predominantly influenced by Turkey-Muslim minority in Thrace.

134. *Idem*; see also Denaro, *JACL*, 1970, p. 700.

135. See Hailbronner, *AJIL*, 1983, pp.490-520.

136. LOSC, art.2(2).

137. Hailbronner, in *Encyclopedia of Public International Law*, 1989, pp.28-29; Yokaris, 1991, p.72.

Both countries faced elections in the first half of 1989, the Turkish local elections in March, treated almost like a referendum for Ozal, and the Greek parliamentary elections in June. The domestic problems of each country and the growing revelations of scandals, mainly in Greece, preoccupied the two leaders and did not provide a supportive climate for the continuation of the rapprochement. The deadlock in the U.N.-sponsored talks on the Cyprus problem, because of the intransigence of Denktash, deepened the gap between the two countries. In Vienna, Greece argued strongly over whether the Turkish port of Mersin should be excluded from the area covered by the planned Atlantic to Urals arms control talks.¹³⁸ The election of Ozal as president of the Turkish Republic, the political instability existing after the parliamentary elections in Greece because of the hung parliament, and the formation of a conservative-communist government marked the death of all the efforts that were undertaken after the three-day crisis in March 1987.

Political instability was always the most significant factor in Greek-Turkish relations. The lack of a strong government in Greece in the period between June 1989 and April 1990 was not to the advantage of any rapprochement procedure. Two significant events took place during this period. The first was in the summer of 1989 when Turkey used Greek rocks east of the island of Samothrace as targets during naval exercises.¹³⁹ The second significant event was the decision of the Greek government to expel the Turkish consul in Thrace, northern Greece, for referring to the members of the Muslim minority in the area as "fellow countrymen."¹⁴⁰ In retaliation, Turkey ordered the Greek consul in Istanbul to leave the country.¹⁴¹ After April 1990, a conservative government was formed in Greece under the prime-ministership of Mitsotakis.

The end of the negotiations between the two countries had an important effect on the obligations undertaken by Papandreou and Ozal in the exchange of talking points in 1987. The obligation to refrain from any activities over the disputed areas of the continental shelf was subject to the conducting of

138. *The Economist*, 14 January 1989, p.45.

139. The incident came to light several months later in March 1990; see *Eleftherotypia* (Athens newspaper), 11 June 1991.

140. *Keesing's Report of World Events*, Vol. 36, Nr. 5, p.37516; *Kathimerini* (Athens newspaper), 1/2-February 1990.

141. Notification of Turkish Foreign Ministry, Turkish Press, 5 February 1990. See generally the declaration of a diplomat as *persona non grata*, Farooque, *IJIL*, 28, 1988, p.p. 94-103.

negotiations. Since the negotiations stopped after October 1988, the two countries have been freed from this obligation.¹⁴² As far as the general moratorium is concerned, the problems raised because of the expulsion of the two consuls, could imply the termination or suspension of the operation of this obligation as a consequence of its breach.¹⁴³

9. NEW GOVERNMENT-NEW ERA?

A change of government in Greece or Turkey invariably "encourages speculation that policies might change."¹⁴⁴ Thus, the prime ministers of the two countries met on 6 July 1990 on the sidelines of a NATO summit in London and it was agreed that a new dialogue should start between the two countries. As a first step, a committee was formed at an ambassadorial level to discuss the content of the dialogue. Then, the ministers of foreign affairs of the two countries were to meet in New York in September during the U.N. General Assembly.¹⁴⁵

The meeting was strongly criticized in Greece. The leader of the opposition, Andreas Papandreou, who in the meantime had considered the 1987-89 dialogue between the two countries to have been a mistake of his administration, recalled one of the principal positions of his party according to which the only existing problem between the two countries was the delimitation of the continental shelf in the Aegean.¹⁴⁶ Even in Turkey, this meeting was not very welcome. It is not without significance that a day before the meeting Turkish President Ozal, in the context of the power struggle that had started within his old party, had indirectly pointed to the directions that a new rapprochement should follow by reaffirming that Turkey "does not recognize the ten-mile Greek airspace."¹⁴⁷

142. But Klemm claims that "the moratorium suggests that the portion of the Aegean Sea located outside Greek and Turkish territorial waters remains a disputed zone," in *Encyclopedia of Public International Law*, 1992, p.47.

143. Vienna Convention on the Law of Treaties, art.60; see also Elias, 1974 pp.114-118.

144. *Financial Times*, 29 June 1990.

145. *Pontiki* (Athens newspaper), 12/19 July 1990.

146. See statement of Papandreou in Berlin during a summit of the Socialist Parties of Europe in January 1990, *Kathimerini* (Athens newspaper), 10 February 1990.

147. *Milliyet* (Istanbul newspaper), *Eleftherotipia* (Athens newspaper), 7 July 1990.

Meanwhile, tension mounted once more over the Aegean as, in July, Turkish military aircraft deliberately swooped into Greece's airspace zone and Greece vetoed a package of EC economic aid to Turkey.¹⁴⁸ Photographs of military installations on the Aegean islands, which were published in the magazine "Jane's Defence Weekly," provided another source of friction.¹⁴⁹ Nevertheless, the Greek-Turkish dialogue started with a meeting of high ranking diplomats in Ankara on 20 September and continued one week later in New York between the foreign ministers of the two countries.

In November 1990, the Turkish government announced that it had sent to all the EC countries, with the exception of Greece, a memorandum referring to the European Community Fisheries Policy and the right of each member state to extend its fishery zone to twelve miles.¹⁵⁰ The *raison d'être* of this memorandum was a discussion paper published by the Commission of the EC in July 1990, which set guidelines for a common fisheries system in the Mediterranean.¹⁵¹

The beginning of the Gulf War, the decision of the Turkish president to side with the allied forces, the rise of Islamic fundamentalism¹⁵² and the prospect of parliamentary elections in November 1991 in Turkey were the reasons for the lack of responsiveness to any Greek initiatives. Moreover, there was increasing evidence of division between President Ozal and the Turkish army and the Ministry of Foreign Affairs. The last two establishments, traditional trustees of Kemal Atatürk's values, questioned Turkey's regional role, especially after the failure of Turkey's application for admission to the European Community. The impression was that Greece was the main obstacle to Turkey's admission to the EC.¹⁵³ Moreover, the fact that the positions of both sides remained in practice unchanged during all these years challenged the need for a "step by step" approach between the two countries.¹⁵⁴ Serious rifts

148. *Keesing's Report of World Events*, Vol. 36, Nr.5, p.38478.

149. *Defence and Diplomacy*, (Greek monthly magazine), August 1990.

150. *Kathimerini* (Athens newspaper), 1 November 1990.

151. *Bulletin of the European Communities*, 1990, Nos. 7/8: 75-76; see also Churchill, *OCIL*, 1992, p.154.

152. Groc, *L' Afrique et l' Asie modernes*, 1988, pp.7-22.

153. On Turkey's relationship with the EC, see Gianaris, pp.164-169; on the role of the Greek factor, see Kramer, in *Future Relations Between Turkey and the EC*, 1988, pp.11-17.

154. Coufoudakis, [2], in *The Greek Socialist Experiment*, 1992, p.176.

in the ruling party in Turkey, rising from its policy during the Gulf crisis, led to a series of resignations of ministers and generals.

The new minister of foreign affairs, Alptemocin, in a speech in the Turkish National Assembly in November 1990, named as existing problems between the two countries the delimitation of the continental shelf, the FIR over the Aegean, the militarization of the Aegean islands and the Muslim minority in Thrace.¹⁵⁵ That did not prevent Mitsotakis from agreeing generally with President Ozal in Tokyo, later in the month, to continue the dialogue between the two countries.¹⁵⁶

During the first half of 1991, several statements made by Turkish politicians questioned the content of the dialogue and the right of Greece to extend its territorial sea.¹⁵⁷ The Dodecanese islands were used by Ozal as a good example of the unsuccessful foreign policy which Turkey had traditionally followed in the past and the need to change that policy in the new world order.¹⁵⁸ Behind these statements were Turkish domestic problems and the fact that Ozal was facing serious problems in his Gulf War policy.

After April 1991, it became known that the U.S. wanted to mediate between the two countries in order to find a solution to existing problems. The first problem to be solved, according to information obtained by the Greek press, was the continental shelf of the Aegean.¹⁵⁹ The United States seemed to believe that it could effect a solution by avoiding the delimitation of the continental shelf and asking the two countries to examine the possibility of a

155. *Milliyet* (Istanbul newspaper), 10/11 November 1990.

156. *Yearbook of 1990*, ELIAMEP, p.394.

157. Ozal in the Turkish Academy of War: "Our aim is to make Greece fear even more our army, our navy and our F-16 [Turkish aircraft], in order not to cause any problem in the future and not to extend its territorial waters to twelve miles," 15 February 1992, *Pontiki* (Athens newspaper), 15 March 1991; see Greek reply in a letter of Greece's Permanent Representative to the U.N., to the U.N. General Secretary on 19 February 1991. Turkish Prime Minister Yildirim Akbulut to the Turkish-Cypriot Station *Bayrak* on 22 March 1991: "... we wish a solution to the problems existing between the two countries in relation to the minorities and the Aegean."

158. "We could have taken the Dodecanese islands if our policy was not so pusillanimous," 6 March 1991, public speech in Smyrna; see also explanation of the spokesman of the Turkish Foreign Ministry to the Turkish news agency *Anadolu* on 15 May 1991 for an interview of Ozal to *Sabah* (Istanbul newspaper) with similar content. See also *Kathimerini* (Athens newspaper), 6 March 1991 and 15 May 1991.

159. See the Athens newspapers *Kathimerini*, 28 April 1991, and *Pontiki*, 3 May 1991.

common exploration and exploitation of the natural resources of the Aegean.¹⁶⁰ More specifically, the Americans proposed the formation of a consortium between the two countries which would explore in common two areas in the Aegean. The gnomon for the selection of the two areas would have been that both parties had conflicting interests therein.

It seems that this proposal started in early April when Ozal asked for the mediation of U.S. President George Bush. The months that followed the Gulf War were considered a good period for the settlement of certain regional disputes. Thus, in June the American ambassador to Greece, Michael Sotirhos, and later in July, Bush, during his official two-day visit to Greece, discussed the possibility of a common exploration and exploitation enterprise with Mitsotakis. The answer was negative.¹⁶¹ Nevertheless, the Greek prime minister, in order to counterbalance his refusal, made two proposals. The first, which was formal and was addressed to Turkey and Bulgaria, proposed a defensive arms-free zone on the common frontiers between the three countries in the area of Thrace. This proposal was rejected by Turkey.¹⁶²

The second proposal concerned the signing of a pact of friendship and cooperation between Greece and Turkey. The U.S. was not in favor of this idea because theoretically the two countries were allies within NATO. Turkey did not reject the idea. However, it made it clear that it could not accept unconditionally the signing of such a pact since the expansion of the territorial sea of Greece was still considered as *casus belli*.¹⁶³ Furthermore, a pact should name all the problems existing between the two countries as well as the ways that they could be solved. More specifically, it was implied that the problem of the delimitation of the continental shelf of the Aegean should not be solved by the International Court of Justice, but after direct negotiations between the two countries based on equity. It is clear that the Turkish side regarded the pact rather as a basis of discussion than as an affirmation of the status quo in the Aegean.

During these months, provocative acts continued. On 9 June 1991, the Turkish Ministry of Defense announced that Turkish aircraft flying over the

160. *To Vima* (Athens newspaper), 16 June 1991.

161. See the Athens newspapers *To Vima*, 16 June 1991, and *Kathimerini*, 10 August 1991.

162. Greek formal proposal, 12 July 1991; Turkey's answer, 17 July 1991. See relevant book by Rozakis, Tounta-Fergadi, Manolopoulou-Varvitsioti, Ioannou, 1977.

163. *To Vima* (Athens newspaper), 16 June 1991.

Aegean would be fully armed. On the same day, it was also announced that Turkey "would not consider itself responsible in the event that there were any victims during interception by Greek aircraft."¹⁶⁴ The second incident was a statement made by the head of the Turkish navy, Admiral Ilfan Tinaz, who questioned the Greek rights over the uninhabited rocks of the Aegean: "The Greeks went as far as to claim even the uninhabited rocks of the high seas in the Aegean."¹⁶⁵ The uninhabited rocks were seen as being in the high seas and not constituting part of Greek territory. It was the first time in the history of Greek-Turkish relations, and since the formation of the Turkish Republic in 1922, that the Turkish army was involved directly in the conflict between the two countries. Three days later, the Turkish government disowned the admiral's statement and explained that the real meaning was that uninhabited rocks do not have their own exclusive economic zone or continental shelf.¹⁶⁶

10. MEETINGS BETWEEN THE PRIME MINISTERS

On 11 September, the prime ministers of the two countries met in Paris on the sidelines of the European Democratic Union to discuss bilateral problems.¹⁶⁷ Prior to that meeting, the new Turkish prime minister, Yilmaz, made it known that he was prepared to discuss topics such as the Cyprus problem, the Muslim minority in Western Thrace, the demilitarization of the Aegean islands and the territorial waters.¹⁶⁸ In the joint press communiqué which was issued following the meeting, the two prime ministers expressed their decision to prepare a pact of good neighborliness, friendship and cooperation.¹⁶⁹ Nevertheless, the conflicting statements made to the press by the prime ministers did not reveal what exactly was discussed.¹⁷⁰

One month later, it became known that the two prime ministers had also discussed the problem of the continental shelf. Mitsotakis proposed to Yilmaz the unofficial division of the continental shelf of the Aegean Sea into three

164. *Ethnos* (Athens newspaper), 10 June 1991.

165. See Turkish News Agency *Anadolu*, 8/9 June 1991; *Eleftherotypia* (Athens newspaper), 11 June 1991; *Pontiki* (Athens newspaper), 14 June 1991.

166. *Kathimerini* (Athens newspaper), 14 June 1991.

167. *Washington Times*, 12 September 1991.

168. *Eleftherotypia*, 11 September 1991.

169. Joint press communiqué in Greek, *Kathimerini* (Athens newspaper), 12 September 1991.

170. See statements of the Greek and Turkish press bureaus, 13 September 1991.

zones: a Greek zone which would not be disputed by Turkey; a Turkish zone which would not be disputed by Greece; and a zone where conflicting claims of the two countries could coexist. To support this idea, the Greek prime minister used Turkish maps published in 1973 and 1974. As was explained in the Greek parliament, the purpose of this proposal was to facilitate the undisturbed exploration and exploitation of the undisputed areas.¹⁷¹ According to the Greek prime minister, Yilmaz initially accepted the Greek proposal and promised that he would consider the details. Greece made it clear that it did not consider itself restricted from drilling outside its territorial waters, while Turkey proposed once more common exploitation of the Aegean.¹⁷² On 3 October 1991, the Turkish Ministry of Foreign Affairs stated that Turkey could not accept any Greek acts contrary to the Bern Agreement and international law until the final delimitation of the continental shelf.¹⁷³

In October 1991, general elections in Turkey resulted in the emergence of a new government under the leadership of Demirel.¹⁷⁴ Once more in Greek-Turkish relations, hopes were expressed for the promotion of a solution to the problems between the two countries. In January 1992, the prime ministers of the two countries met in Davos, Switzerland. The feeling was that nothing had changed. According to information obtained by the Greek press, five subjects were discussed in the meeting. The pact of friendship and cooperation; the delimitation of the continental shelf where both parties did not change their views; the status quo of the Ecumenical Patriarchate of Constantinople; the common exploration of the Aegean and the Cyprus problem.¹⁷⁵ According to Demirel, all these issues could be solved only with a package deal and therefore the discussion failed.

The only issue that was successfully discussed was the pact of friendship and cooperation. The Greek prime minister had asked Demirel to accept as a precondition the respect of the territorial integrity of both countries, international treaties and the principles of the U.N. and CSCE as well as those

171. See the Athens newspapers *Kathimerini*, 19 October 1991, and *Pontiki*, 24 October 1991. See map 3.

172. See *supra*, pp.167-170.

173. Statement of Ataman, 2 October 1991, Turkish News Agency *Anadolu*.

174. See the results of the national elections of 20 October 1991 in *Yearbook of 1991*, ELIAMEP, p. 312.

175. See the Athens newspapers *To Vima*, *Eleftherotypia*, 26 January 1991, and *Kathimerini*, 1 February 1992.

of international law.¹⁷⁶ Demirel agreed and the two leaders decided to sign the pact during an official visit of Mitsotakis to Ankara in June 1992. Criticism in Greece and Cyprus of this decision forced Mitsotakis to postpone signing until after resolution of the Cyprus problem.

On 29 February 1992, the Greek government gave the private sector the option of buying 49% of the Greek Oil Company (DEP) and thus transferred the exclusive rights of exploring the continental shelf of the Aegean.¹⁷⁷ On 22 May 1992, the Turkish minister to the prime minister, during an official visit to Athens, revived the proposal for a common exploration of the Aegean, which was once again rejected by the Greek government.¹⁷⁸

The tension between the two countries over the Aegean continued. On 7 March 1992, in an incident involving a Greek coast guard boat and a Turkish fishing vessel, probably within Greek territorial waters, a Turkish fisherman was killed.¹⁷⁹ On 20 June, during the counter-maneuvers against a Turkish aircraft which had entered Greek national airspace, a Greek aircraft crashed into the sea and its pilot, N. Sialmas, was killed.¹⁸⁰ On the following day, the Greek prime minister went on an unofficial visit to Turkey. In the joint press communiqué issued after the meeting, both prime ministers agreed to continue their efforts for the signing of a pact of friendship to promote economic and cultural ties between the two countries and to offer all possible help for the solving of the Cyprus issue.¹⁸¹

On 17 April 1993, Turkish President, Özal died and Turkey faced a political crisis. Demirel's election as president of Turkey and Mrs. Ciller's appointment as prime minister did not mean the end of this crisis. The two politicians gave the impression of being unable to resolve the political gridlock. The escalating violence in the Kurdish-speaking regions of the country, the unstable coalition government, and the mounting economic problems ensured that foreign policy issues were put aside. In the Greek general elections in October 1993, the PASOK party returned to power and Mr. Papandreou became prime minister once more. Under these political circumstances, it does

176. *To Vima*, 9 February 1992.

177. *Kathimerini* (Athens newspaper), financial pages, 29 February 1992. See also EC Directive C. 23, 27 January 1993.

178. *Eleftherotypia* (Athens newspaper), 22 May 1992.

179. See the Athens newspapers *Eleftherotypia* and *Kathimerini*, 7/8 March 1992.

180. *Ta Nea* (Athens newspaper), 20 June 1992.

181. Joint press communiqué in Greek, *Pontiki* (Athens newspaper), 24 June 1992.

not come as a surprise that for more than two years, 1991 to 1993, no progress has taken place on any of the fields which affect Greek-Turkish relations.

11. RETRACTIONS

During the 1988 rapprochement, almost all aspects of the Greek-Turkish conflict were raised. In this respect, this period was different from the years prior to 1988. Just after 1974, the Turkish diplomatic tactic was to raise additional matters in order to achieve a desired "trade-off" in the continental shelf delimitation. By raising issues such as the control over the Athens FIR, Turkey wanted to collect bargaining pieces in relation to its main dispute with Greece. The gambit was to raise a dispute in one section as a means of getting satisfaction in another but, despite the various problematic issues that were raised, the emphasis was always placed on the Aegean continental shelf problem.¹⁸²

In the years after the March 1987 crisis, this tactic was followed only once in relation to the maritime search and rescue area in the Aegean.¹⁸³ The main characteristic of this period was that particular emphasis was placed on the Muslim minority of Western Thrace as well as on the demilitarization of the eastern Aegean islands.¹⁸⁴ This change of policy was followed by successful attempts to persuade the Muslim minority to support and elect for the first time in the Greek parliament independent Muslim candidates who were not members of any political party. The aim of Turkish foreign policy was to raise many individual issues, irrelevant to the continental shelf, which taken together could form a package of problems solvable only by a package deal approach.

Greece, on the other hand, did not raise new problems. Generally, the Greek approach was more defensive in comparison with the Turkish approach for one simple reason. The existing status quo was not felt to be as unsatisfactory to Athens as it was to Ankara, and Greece wanted to maintain it. The aim of the Greek socialist government to connect progress in Greek-Turkish bilateral problems with a solution to the Cyprus problem had failed. More-

182. See Birand, in *Greek-Turkish Conflict in the 1990's*, pp.36-38.

183. See *supra*, pp.266.

184. For an example of this change of policy, see Inan's article published in the semi-official journal of the Turkish Foreign Ministry, *Dis Politika*, 1988, pp.77-88.

over, the paramount importance given to this latter problem in the Greek foreign affairs hierarchy prevented Prime Minister Mitsotakis from signing a pact of friendship and cooperation.

The main characteristic of the rapprochement period was the "strong personal element" of the two prime ministers.¹⁸⁵ However, the approaches of the two leaders were not as spontaneous as they seemed to be at first sight. Ozal had "a very precise idea of his policy goals and the pros and cons of his activities."¹⁸⁶ Greek bureaucracy, on the other hand, tried and finally managed to keep under its control the later phases of the rapprochement. In any case, there was no historical breakthrough in the period after 1988. A solution to the Greek-Turkish dispute remained to be achieved in the future.

185. Pridham, in *Greek-Turkish Conflict in the 1990's*, p.78.

186. Kramer, in *Greek-Turkish Conflict in the 1990's*, p.67.

9. What is the Future of Judicial Maritime Delimitation? Two New Delimitation Cases

INTRODUCTION

As has been seen, the jurisprudence of third-party delimitation of maritime zones played an important role in the development of the Aegean Sea dispute and influenced significantly the Greek and Turkish positions as well as their diplomatic policies and tactics. This jurisprudence, which showed impressive growth from 1982 to 1985, declined rapidly after the *Libya/Malta* case. With the exception of one case,¹ international judicial organs remained silent on matters of maritime delimitation and left space for individual legal writers to express their opinions and comment on these decisions. However, in 1992 and 1993, two tribunals, an *ad hoc* Court of Arbitration and the ICJ delivered two judgments concerning the delimitation of maritime zones. The award of the Arbitration Court concerned the delimitation of the boundary between Canada and France in the maritime areas between the French islands of St. Pierre and Miquelon and the Canadian coasts.² The judgment of the ICJ, which came a year after the arbitral award, determined the location of the maritime boundary between Greenland and the Norwegian island of Jan Mayen.³

As is natural, the two judgments have not yet influenced the policies of the two countries since they are very recent. Any possible consequences of

1. The *Guinea-Bissau v. Senegal* case. However, this case did not draw a new boundary but considered that there was one already in place with the exception of the EEZ (§86 of the judgment) and the fishery zone (Declaration of Judge Barberis) which were not delimited. See also the *Case Concerning the Arbitral Award of 31 July 1989*, (*Guinea-Bissau v. Senegal*).

2. *Case Concerning the Delimitation of Maritime Areas between Canada and the French Republic*, 10 June 1992, *ILM*, 31, pp.1149-1178, (hereafter *SPM*).

3. *Case Concerning Maritime Delimitation in the Area between Greenland and Jan Mayen*, (Denmark v. Norway) 14 June 1993. After the *Aegean Sea* case, this was the first to have been brought by unilateral application.

the two judgments for the Greek-Turkish dispute will be examined in the following pages in relation to the positions and arguments of the parties as they have been expressed since 1974.

1. THE TWO JUDGMENTS AND THE AEGEAN SEA DISPUTE

The importance of these two cases for the maritime zones dimension of the Aegean dispute is considerable. The reason is that, in both cases, the apple of discord was the existence of islands in the delimitation area and their entitlement to maritime zones. Also, important questions related to equitable principles, special or relevant circumstances, geographical factors, proportionality between the relevant coasts and the contested maritime areas, the equidistance method and Articles 74 and 83 of the LOSC were considered by the two tribunals.

The extent to which their approach and the interpretation they gave to the rules of international law concerning maritime delimitations is relevant to the issues underlying the Aegean Sea dispute will be examined below. However, in these two cases there existed both similarities with and differences from the situation in the Aegean Sea which have to be taken into consideration if the precedent value of these cases for the Greek-Turkish dispute is to be properly assessed.

Because of geographical circumstances, a future delimitation in the Aegean would be considered as a delimitation between two states whose coasts are opposite each other. In the *St. Pierre and Miquelon* case, however, the Arbitration Court noticed that the French islands "are within a concavity framed exclusively by Canadian coasts."⁴ Their relationship to the south coast of Newfoundland was found to be that of adjacency and therefore the dispute concerned a delimitation between adjacent coasts. On the contrary, in the *Jan Mayen* case the ICJ held that the delimitation "is between coasts which are opposite."⁵

Since Turkey is not a party to the 1958 Convention on the Continental Shelf and voted against the LOSC in UNCLOS III, the applicable law for a future delimitation in the Aegean Sea will be based on the rules of customary international law unless, of course, the two countries agree on another formula. In the *St. Pierre and Miquelon* case, the two parties requested that the

4. *SPM*, §26.

5. *Jan Mayen* case, §49.

Court delimit a single boundary of the maritime areas appertaining to each of them, on the basis of the principles and rules of international law and in accordance with equitable principles, taking into account all the relevant circumstances "characteristic of the region in question" so as to arrive at an equitable result.⁶ The Court accepted this "fundamental norm" to be applied in the case and dismissed French contentions that "Article 6 has a role to play" since it was not applicable to a single delimitation of both the sea-bed and the water column.⁷ In the *Jan Mayen* case, the ICJ held that for the delimitation of the continental shelf the Geneva Convention on the Continental Shelf is binding upon the parties and therefore it will be the applicable law.⁸ Nevertheless, the interpretation and application of this article could not be made "without reference to customary law on the subject, or wholly independently of the fact that a fishery zone boundary is also in question."⁹ Regarding the delimitation of the fishery zone, the ICJ noted that the two states did not have any objections to applying "the law governing the boundary of the exclusive economic zone, which is customary law."¹⁰ Articles 74 and 83 of the LOSC could not be applied since the two countries had not ratified them and they were not yet in force. However, the reference in both articles to the aim of achieving an "equitable solution" was considered as reflecting the requirements of customary law as regards the delimitation of these two zones.¹¹

Geographical features are always at the heart of a delimitation process. Despite the fact that, in both cases, islands were at the center of the dispute, the geographical configuration of the coasts in the area was completely different. In the *Jan Mayen* case, there was the remote island of Jan Mayen with a total area of 373 sq. km., lying 540 miles west of Norway, 290 miles northeast of Iceland and 250 miles from the enormous landmass of Greenland.¹² Numerous islands, islets and rocks are strewn in front of the East Greenland coast which is marked by a multitude of fjords and peninsulas. As with the coast of the Anatolian peninsula, the coast of East Greenland had

6. Canadian Memorial, §275, fn.1; French Memorial, §284.

7. *SPM*, §36-40.

8. *Jan Mayen*, §44.

9. *Ibid.*, §46; this passage is slightly arbitrary because it is not clear how these aims of the application of Article 6 of customary law and of the applicable law for the fishery zones were to be fulfilled.

10. *Ibid.*, §47.

11. *Ibid.*, §48.

12. See *New Directions in the Law of the Sea*, Vol.V, 1977, p. 29.

established a system of straight baselines.¹³ In the *St. Pierre and Miquelon* case, the geographical circumstances were far more complicated because of the existence of islands, straits, peninsulas, bays and coasts with sinuosities and deep indentations. The two French islands of St. Pierre and Miquelon were completely remote and isolated.¹⁴ Thus, in both cases, although the subject of the delimitation was islands, the geographical circumstances did not present many similarities with the Aegean Sea since there were no chains of islands stretching out one after another long distances from the coasts. Moreover, the islands in question were scarcely populated and did not present any serious security or defense problems. Thus, the task of examining both cases will mainly be the investigation of general rules for delimitation rather than a relative and comparative application of the particular decisions in situations like the Aegean. According to the terminology of the ICJ, the analysis of the two judgments will be through the prism of rules which can offer "consistency and a degree of predictability."¹⁵

2. ENTITLEMENT OF ISLANDS TO MARITIME ZONES, OR "A DWARF IS NO LESS A MAN THAN A GIANT"¹⁶

The ICJ observed in the *Libya/Malta* case that the questions of entitlement and delimitation of continental shelf "are not...distinct but...complementary" since "the legal basis of that which is to be delimited, and of entitlement to it cannot be other than pertinent to that delimitation."¹⁷ The question, however, of the entitlement of islands to maritime zones is not an easy one and sometimes undermines the question of the delimitation.

Clearly, that is the case in the Aegean Sea dispute. In the opinion of the ICJ, the "very essence" of the *Aegean Sea* case related to the "entitlement of those Greek islands to a continental shelf."¹⁸ This actually appeared to be the subject matter of the dispute since, in its application in 1976, Greece requested that the Court adjudge and declare first that the Greek islands "are entitled to the portions of the continental shelf which appertain to them ac-

13. Danish Memorial, §8-29.

14. *SPM*, §18-23.

15. *Jan Mayen* case, §58; *Libya/Malta*, §45.

16. Vattel in *Dictionnaire de la Terminologie du Droit International*, p.248, "Egalité."

17. *Libya/Malta* case, §27.

18. *Aegean Sea*, 1978, §83.

cording to the applicable principles and rules of international law.”¹⁹ Only as a second request did the following question arise: “What is the course of the boundary between the portions of the continental shelf appertaining to Greece and Turkey...in the aforesaid areas of the Aegean Sea?”²⁰

The view that the entitlement of the islands to a continental shelf was the hard core issue of the dispute was not only the Greek position. As the Court observed, “Turkey, which maintains that the islands in question are mere protuberances on the Turkish continental shelf and have no continental shelf of their own, also considers the basic question to be one of entitlement.”²¹ Thus, “the delimitation of the boundary is a secondary question to be decided after, and in the light of, the decision upon the first basic question,” namely, the entitlement of the islands to a continental shelf.²²

The problem of the entitlement of the islands to maritime zones was one of the main issues raised both in the *St. Pierre and Miquelon* and the *Jan Mayen* cases. In the *Canadian-French* arbitration, the two countries used arguments which were similar to those of Greece and Turkey in the *Aegean Sea* case.

France spoke of “the equal capacity of islands and mainland countries to generate maritime areas.”²³ More specifically, it contended that, if the Canadian proposal were to be accepted, the two islands would be deprived of any EEZ and continental shelf. Consequently, they would be put on a par with rocks which, according to Article 121 (3), cannot sustain human habitation or economic life of their own.²⁴ Canada had no difficulty accepting that, in general, both Article 1(b) of the Geneva Convention and Article 121 of the LOSC prescribe “no separate rules for delimitations affecting islands” and, therefore, islands “are burdened with no *a priori* incapacity” to generate maritime zones.²⁵

However, it drew a distinction between title in the abstract and delimitation.²⁶ It considered that the islands of *St. Pierre and Miquelon* were

19. See Greek Application in *Aegean Sea Pleadings*, p.11.

20. *Idem*.

21. *Aegean Sea*, 1978, §83.

22. *Idem*; see also *Jan Mayen* case, Sep. Opinion Shahabuddeen, p.160.

23. *SPM*, §43.

24. French Counter-Memorial, §323.

25. Canadian Memorial, §307.

26. Canadian Counter-Memorial, §321.

"superimposed upon the Canadian continental shelf itself."²⁷ Therefore, they could only be entitled to an enclaved twelve-mile zone which had already constituted the breadth of the two islands' territorial sea since 1971.²⁸ This argument was regarded by France as implying that Canada was "in a sense owner of all the maritime area adjacent to it" but that it "would deprive itself of some of its property, to sacrifice itself in order to withdraw from the maritime areas that are its by right."²⁹

In the *Jan Mayen* case, the two parties did not question whether the territories at issue, which were both islands, were for any reason incapable of generating maritime zones of their own. While Denmark initially wanted to claim that Jan Mayen belonged to the category of rocks, it later abandoned this position and conceded that Jan Mayen was an island.³⁰ As was stated, Denmark did not "question Jan Mayen's status as an island under international law."³¹ Undoubtedly, the reason for this different approach of Denmark was the size of Jan Mayen, which was bigger than the total area of the Republic of Malta.³² However, while Denmark accepted the entitlement of Jan Mayen to a continental shelf and a fishery zone, it questioned the extent of the area derived from this entitlement.³³

More specifically, Denmark asked the Court to

1. adjudge and declare that Greenland is entitled to a full 200-mile fishery zone and continental shelf vis-à-vis the island of Jan Mayen and
2. ...draw a single line of delimitation of the fishery zone and continental shelf area of Greenland in the waters between Greenland and Jan Mayen at a distance of 200 n.miles...³⁴

27. Canadian Memorial, §397.

28. *Ibid.*, §9, 5, fig.45, Canadian Counter-Memorial; further justification for this argument was drawn from the Sharjah/Dubai arbitration, see *Dipla*, 1984, pp.195-202.

29. Argument of Luchinni, 8 August 1991, p.28; compare with the Canadian view that this case presented "the anomaly of superimposition upon the continental shelf and maritime zones of a foreign State, from which any zone accruing to the islands must be extracted in its entirety," Canadian Counter-Memorial, §482, a; see also Dissenting Opinion Weil, §19.

30. *Jan Mayen* case, Sep.Opinion Ajibola, p.291.

31. Danish Reply, p.152, §414.

32. 380 km² for Jan Mayen, 315 km² for Malta, Counter-Memorial of Norway, Vol. I, p. 23, §78.

33. See *Jan Mayen* case, Sep.Opinion Oda, pp. 100-101, §42-43.

34. *Jan Mayen* case, Danish Reply, §9

As Judge Ajibola observed, the Danish position was "more of a claim of entitlement than a call for delimitation."³⁵ Thus, as in the *Aegean Sea* case, the secondary question was that of the delimitation while the first question was that of the entitlement but from a different angle, namely, the right of an insular formation *per se* to generate full maritime zones.³⁶

Both Courts took a very firm stand towards this problem. The Arbitration Court observed that "the continental shelf in this area is a continuum characterized by the unity and uniformity of the whole seabed." Therefore, and since "it is all one shelf, it cannot be considered as exclusively Canadian. *Each coastal segment has its share of shelf.*"³⁷ At this point, it has to be remembered that the Aegean sea-bed presents similar characteristics. The ICJ was even more specific. It mentioned that "the coast of Jan Mayen, no less than that of eastern Greenland, generates potential title to the maritime areas recognized by customary law."³⁸

As to the question of the extent of these maritime zones, the Court of Arbitration answered that the Canadian enclave proposal "is not equitable because it denies the islands any maritime area beyond that already recognized as territorial sea."³⁹ On the other hand, the ICJ did not limit itself to a negative answer. It held that the potential title was "in principle up to a limit of 200 miles" from the baselines of Jan Mayen.⁴⁰ Within this spirit of the 200-mile maximum potential title of each of the two opposite coasts, the Court designated one maritime area between Greenland and Jan Mayen which was characterized as the "area of overlapping potential entitlement."⁴¹ The designation of this area was made in spite of the fact that Norway had limited its claims to the median line between the two opposite coasts and not to the full

35. *Jan Mayen* case, Sep. Opinion Ajibola, p. 291.

36. Initially, in its application, Denmark asked the Court to draw a single line delimitation. This made Norway complain that "while the first application was simply for a single line of delimitation, the principal submission was changed to ask for a declaratory judgment of entitlement to a full 200-mile fishery zone and a full 200-mile continental shelf vis-à-vis the Norwegian island of Jan Mayen," Norwegian CR 93/5, p. 13.

37. *SPM*, §46, emphasis added.

38. *Jan Mayen* case, §70.

39. *SPM*, §70.

40. *Jan Mayen* case, §70.

41. *Ibid.*, §19.

200-mile zone. However, it should be noted that in its reasoning the Court, quite remarkably, did not make any use of this area.⁴²

The cautious approach in the application of the law in the *Jan Mayen* case in no way diminished the expressed view both of the ICJ and the Arbitration Court as to the entitlement of the islands to maritime zones. According to Judge Weil's dissenting opinion, "a coast is a coast, whether insular or continental"⁴³ and Judge Ajibola continued by observing that "however small the island of Jan Mayen may be, this cannot affect its rights under international law with respect to the issue of entitlement and the non-encroachment principle."⁴⁴

Moreover, it can be noted that, in both cases, the right of St Pierre and Miquelon or of Jan Mayen to generate maritime zones was not denied by continental territories but by islands as well. As has been pointed out "from a strictly legal point of view...Newfoundland, although much larger in size than St Pierre and Miquelon, is equally an island."⁴⁵ The same can be said for Greenland, which is equally an island although "the size of a continent."⁴⁶

In the *Libya/Malta* case, the ICJ indirectly endorsed the view expressed by the two parties "that *the entitlement to continental shelf is the same for an island as for mainland.*"⁴⁷ The last two cases did not leave any room for doubt. All islands, as described in Article 121(1) of the LOSC, can generate, on an equal footing with mainlands, maritime zones.⁴⁸ Moreover, the Arbitration Court's approach in the *St. Pierre and Miquelon* case showed that all islands were automatically entitled to a twelve-mile territorial sea irrespective of whether this would generate an enclave or not. As is obvious, the consequences of this finding for the Aegean Sea dispute are far-reaching.

3. NATURAL PROLONGATION AND GEOPHYSICAL-GEOMORPHOLOGICAL CONSIDERATIONS

Directly related to the question of the entitlement of islands to maritime zones is the role of the natural prolongation concept. Specific attention has to

42. See *Jan Mayen* case, Sep.Opinion Oda, p.101, §45.

43. *SPM*, Diss.Opinion Weil, §48.

44. See *Jan Mayen* case, Sep.Opinion Ajibola, p.292.

45. *SPM*, §52.

46. *Jan Mayen* case, Sep.Opinion Evensen, p.85.

47. *Libya/Malta* case, §52, emphasis added.

48. For the *SPM* case, see Politakis, *IJourMCL*, 1993, pp.133-134; La Fayette *IJourMCL*, 1993 p.96.

be drawn to the findings of the two Tribunals in relation to this concept. The reason is that, although it ceased to appear in Turkish argumentation even before the end of UNCLOS III,⁴⁹ it can always return through the back door as part of relevant circumstances or equitable considerations.

The natural prolongation concept appeared only in the Canadian arguments in the *St. Pierre and Miquelon* case. Its invocation was rather unexpected for two reasons. The first reason is that the subject of the dispute was the delimitation of a boundary line both for the continental shelf and the EEZ. As the ICJ pointed out in the *Gulf of Maine* case, the delimitation of both the continental shelf and the water column above it calls for the application of criteria or a criterion "which does not give preferential treatment to one of these objects to the detriment of the other."⁵⁰ The natural prolongation concept is connected historically solely with the continental shelf regime. The second reason is that the ICJ stated very clearly in the *Libya/Malta* case that, within 200 miles from the coasts, "the geological or geomorphological characteristics of those areas are completely immaterial" while distance from the coasts was the dominant criterion.⁵¹

Canada argued that the natural prolongation criterion "is not, even within the 200 mile limit, a pure 'legal fiction' that for all practical purposes can be equated with distance." Furthermore, it was contended that the pronouncements of the ICJ in the *Libya/Malta* case could not be interpreted "as an absolute exclusion of any consideration of the nature of the seabed where the delimitation is concerned with a continental shelf whose outer limits are not defined exclusively by distance."⁵² Therefore, Canada invoked the natural prolongation criterion as "a relevant circumstance to the extent that it may 'support and strengthen' a delimitation determined on geographical and other grounds."⁵³ It was on this basis that the islands of St. Pierre and Miquelon were considered as a "feature of the continental shelf of Canada no portion of which can plausibly be said to represent a physical appurtenance of those

49. See *supra*, pp.161-162.

50. *Gulf of Maine*, §194.

51. *Libya/Malta*, §39-40; see *supra*, pp.209-213.

52. Canadian Memorial, §290; the argument was based on the question of what the criterion of a state's continental shelf which extends beyond the 200-mile limit is. If natural prolongation within the 200 miles is to be excluded to the benefit of the distance criterion, would there be a sudden shift in the basis of a title at the 200-mile limit? It is true that the LOSC leaves this question unanswered.

53. Canadian Memorial, §439.

islands.”⁵⁴ However, Canada accepted that the situation would have been different if the opposite coasts of the continuous continental shelf were formed by the French mainland and not defined entirely by the coasts of Canada.⁵⁵

France rejected the Canadian views by arguing that the continental shelf is defined as “an underwater extension of a coast measured in terms of distance from the coast ...[since] legal entitlement has evolved from the physical concept of natural prolongation to the legal concept of distance.”⁵⁶

The Court dismissed the Canadian arguments. After mentioning the *Libya/Malta* case in which natural prolongation, in spite of its origins, has become “more and more flexible,”⁵⁷ it pointed out that

it should not be forgotten either that the physical structure of the sea-bed ceases to be important when the object, as in this case, is to establish a single, all purpose delimitation both of the sea-bed and the superjacent waters.⁵⁸

In his Dissenting Opinion, Weil was more specific. The rejection of the physical features of the continental shelf was not connected only with the subject of the dispute concerning the water column. He clearly stated that, beyond the 200 miles, the concept of physical natural prolongation has been abandoned in preference for the distance method.⁵⁹

The natural prolongation concept was totally ignored by the ICJ in the *Jan Mayen* case. The only geophysical factor which was found to be relevant to the delimitation was the presence of ice in the waters of the region.⁶⁰ The two parties, however, referred in their arguments to the geology of the area. None of them attached any real importance to the fact that there was “an elongated trough immediately west of Jan Mayen Ridge, approximately 110 miles long in a north-south direction and 35 miles across at its broadest.”⁶¹

Nevertheless, there was no hesitancy among the judges in concluding that “within the normal continental shelf of 200 miles width, the natural pro-

54. *Ibid.*, §441.

55. *Ibid.*, §24-26, 442.

56. French Counter-Memorial, §292.

57. *Libya/Malta*, §34.

58. *SPM*, §47.

59. *SPM*, Diss.Opinion Weil, §41.

60. *Jan Mayen*, §77-78.

61. Norwegian Rejoinder, §68; see also Danish Memorial, §153-158; Norwegian Counter-Memorial, §102-109.

longation has now been replaced by the geometric and more neutral principle of adjacency measured by distance" and therefore has "no relevance to submarine topography and geology—except in so far as that shelf could be further extended."⁶² The two cases confirmed beyond any doubt that the natural prolongation concept within a distance of 200 miles is an element of the past.

4. EQUITY

The significance of the findings of the two Tribunals concerning equity and equitable principles is apparent. Despite the difficulties of its definition and its related uncertainties, equity appears in every maritime delimitation with more frequency than any other concept, either in the form of equitable principles, or in the form of an equitable result, an equitable method or an equitable solution. The two cases under examination were no exception. They both used equity in several ways, either at the stage of the application of the rules or in order to check the result.

The Court of Arbitration gave its attention to the application of "rules of international law as well as equitable principles"⁶³ and the need to arrive at "a reasonable and equitable solution."⁶⁴ However, the overall result raised doubts in relation to the reasoning of its equitableness. As Judge Weil explained, the established boundary "appeared equitable to the majority of this Court and this is sufficient in itself, in its eyes."⁶⁵ He also accused the Court of abandoning the *Libya/Malta* approach to equity which looked "with particularity to the peculiar circumstances of an instant case" and also looked "beyond it to principles of more general application."⁶⁶ According to his opinion, the Court in the *St. Pierre and Miquelon* case abandoned the corrective role of equity which operates within international law and preferred to rely on "(pseudo) equitable" principles, independent and autonomous of any rule of law, which were "a substitute for law."⁶⁷ Equity gave in reality *carte blanche* for the adoption of any methods which could lead to an equitable re-

62. *Jan Mayen* case, Sep.Opinion Oda, p.99, §36-37, Sep.Opinion Shahabuddeen, p.166; for the outer continental shelf, see Kwiatkowska, *ODIL*, 1991.

63. *SPM*, §24.

64. *Ibid.*, §69; however, what is equitable in international law is not necessarily reasonable.

65. *SPM*, Diss.Opinion Weil, §27.

66. *Libya/Malta*, §45-46.

67. *SPM*, Diss.Opinion Weil, §28.

sult.⁶⁸ Judge Gotlieb, who also dissented, expressed the view that the Court failed "to employ equitable principles" and also failed "to reach an equitable result."⁶⁹

Different in many respects was the approach of the ICJ in the *Jan Mayen* case. Equitable principles were not seen as independent and autonomous. On the contrary, Article 6 of the Continental Shelf Convention and, more specifically, the equidistance-special circumstances rule was described as expressing a general norm based on equitable principles.⁷⁰ Equity was regarded as having "a normative dimension which is reassuring, predictable and general in its application."⁷¹ Specific reference was also made to "the purpose of achieving an equitable result in accordance with equitable principles,"⁷² as well as to "the measure of discretion conferred on the Court by the need to arrive" at this equitable result.⁷³

This measure of discretion left to the ICJ, however, raised various issues. The first concerned the nature of the boundary itself. The ICJ found that it was bound to apply the "law applicable to the continental shelf and the law applicable to the fishery zones."⁷⁴ Despite the different considerations that were used by the Court for the two different boundaries, the ICJ found it finally equitable to produce a co-incidence of lines "even when the position" of the two boundaries "was altered to reflect factors that had no relevance," either to the continental shelf or to the fishery zone.⁷⁵

The second problem concerned the position of the final boundary. The equitable result was to be achieved after the adjustment of the median line. This adjustment was left within the measure of discretion conferred on the Court. The result was that the actual boundary represented "one choice from an infinitive number of potential lines of delimitation in this area."⁷⁶ The equitable result achieved did not give the "slightest hint" in the reasoning of the judgement as to why "the median line as a line of departure should be adjusted or shifted so as to allot one half of the southern part of the "area of

68. *Ibid.*, §29.

69. *SPM*, Diss.Opinion Gotlieb, §1-2.

70. *Jan Mayen* case, §49.

71. Bedjaoui, *REDI*, 1990, p.378.

72. *Jan Mayen* case, §60.

73. *Ibid.*, §90.

74. *Idem.*

75. Evans, *ICLQ*, 1994, [2] C.

76. *Jan Mayen* case, Sep.Opinion Oda, p.117, §100.

overlapping claims" to Greenland while leaving the other half to Jan Mayen."⁷⁷ A possible explanation could be that the Court exercised its discretion "on the basis of its sense of the fair and equitable"⁷⁸ which was closer to equity in the broad and general sense than to equity *infra legem*.

Apart from these problems, the main disadvantage of the decision of the Court was that the result seemed equitable only in relation to the specific claims of the two parties. The ICJ, in reality, split the difference between the extreme lines claimed by the parties and shared the disputed zone. Had Norway claimed a full 200-mile zone around Jan Mayen, would the boundary line adopted by the ICJ have seemed equitable?

The judgment will "tend to encourage immoderate and discourage moderate claims in the future."⁷⁹ Thus, if the equitableness of a result is to be judged only in accordance with the claims of the parties in each case, it is easy to see where this situation can lead in the Aegean Sea. Moreover, the attitude of the Court towards the claims of the parties represents a basic problem of international justice at least in the field of maritime delimitations. There would only be a few countries, if any, which would accept third-party delimitation if they knew their claims were to be completely ignored and the claims of the opponent party were to triumph over theirs. Thus, as Judge Weil noted in the *St. Pierre and Miquelon* case, "accommodating the interests of the parties is an inherent requirement of the fundamental norm of an equitable result," which is why the Turks use both terms, "equity" and "interests," in their argumentation.⁸⁰

As far as equity within the specific judgments is concerned, it has to be accepted that "a decision cannot be equitable when litigants do not understand the decision, how it was reached, nor why such legal rules should be applied to the situation."⁸¹ Thus, "that the effort of the Court was conscientiously directed towards the finding of an equitable solution," as Judge Oda mentioned,⁸² cannot really be appreciated when the equitable solution is unsupported by any profound analysis of the reasons according to which the re-

77. *Jan Mayen* case, Sep.Opinion Oda, p.115, §95.

78. *Jan Mayen* case, Sep.Opinion Weeramantry, p.252, §142.

79. *Jan Mayen* case, Sep.Opinion Schwebel, p.127.

80. *SPM*, Diss.Opinion Weil, §36.

81. Nader and Starr, in *Equity in the World's Legal Systems, A Comparative Study*, 1973, p.133, cited by Judge Shahabuddeen in his Sep.Opinion, p.197, fn.1.

82. *Jan Mayen* case, Sep.Opinion Oda, p.117, §100.

sult is considered as equitable. Unfortunately, and in spite of the fact that in the *Jan Mayen* case the ICJ referred to equity *infra legem*, both Tribunals failed to show clearly how the equitable result was achieved.

5. MEDIAN LINE-EQUIDISTANCE AND ARTICLE 6 OF THE GENEVA CONVENTION

The positions of the two Tribunals in the two cases represent two completely different approaches with regard to the median line and Article 6 of the Geneva Convention. It should be remembered at this point that the question of the use of the median line and of the application of the Geneva Convention, to which Greece is a party, are two matters of controversy between Greece and Turkey in the Aegean. Turkey considers that it is not bound by the rules of the Continental Shelf Convention of 1958, whereas Greece invokes these rules and asks for a delimitation in accordance with the median line.⁸³

(a) Article 6 of the Continental Shelf Convention

The great disparity of views between the Courts in the two cases was demonstrated by the way that they examined the relevance of Article 6 of the Continental Shelf Convention under the light of a common maritime boundary delimitation.

More specifically, the Court in the *St. Pierre and Miquelon* case considered that "in a single or all purpose delimitation operation, Article 6 of the Convention on the Continental Shelf has no mandatory force even between States which are parties to the Convention."⁸⁴ On the contrary, the ICJ in the *Jan Mayen* case held that since

both States are parties to the 1958 Convention and, there being no joint request for a single maritime boundary as in the *Gulf of Maine* case, the 1958 Convention is applicable to the delimitation of the continental shelf between Greenland and Jan Mayen.⁸⁵

The reference to Article 6 in the *Jan Mayen* case was not only made in connection with the continental shelf regime and the fact that both Norway and Denmark were parties to the 1958 Convention. The application of this

83. See *supra*, p.125.

84. *SPM*, §40.

85. *Jan Mayen* case, §45.

Article was, according to the ICJ, a more general requirement. The Court observed that:

The fact that it is the 1958 Convention which applies to the continental shelf delimitation in this case does not mean that Article 6 thereof can be interpreted and applied without reference to customary law on the subject, or wholly independently of the fact that a fishery zone boundary is also in question in these waters.⁸⁶

Thus, the Court considered that, in spite of the fact that Article 6 represented the applicable law, the solution was not disconnected from the rules of customary law. In order to strengthen this view, the ICJ examined and reaffirmed the approach of the *Anglo-French* Arbitration Court in relation to Article 6. According to this court, in the case of opposite states, "it must be difficult to find any material difference between the effect of Article 6 and the effect of the customary rule which also requires a delimitation based on equitable principles."⁸⁷

The assimilation of Article 6 with the rules of customary international law, at least in the case of a delimitation between opposite states, as is the case in the Aegean Sea, was further proved by another fact. Article 6 refers to the regime of the continental shelf as it was understood in 1958, namely, the 200-meter isobath or the exploitability criterion. The area between Greenland and Jan Mayen does not constitute a continental shelf in that sense. On the contrary, it is a continental shelf according to the new definition of the outer limit of this regime, embodied in Article 76 of the 1982 Convention.⁸⁸ Thus, the application of Article 6, even for a sea-bed which was not considered to be continental shelf according to the 1958 Convention, showed the general applicability of this article for customary law delimitations.

(b) Median Line/Equidistance Principle

The same divergence of views between the two Tribunals existed in their approach towards the equidistance/median line method. However, it has to be mentioned that a possible explanation for this different approach was the fact that the *St. Pierre and Miquelon* case concerned a delimitation

86. *Ibid.*, §46.

87. *Idem.*

88. *Jan Mayen* case, Sep. Opinion Oda, pp.105-106, §61; see also Sep. Opinion Shahabuddeen, p.135.

between adjacent coasts, whereas the ICJ decision referred to a delimitation between opposite states. International judiciary has long held that

whereas a median line divides equally between the two opposite countries areas that can be regarded as being the natural prolongation of the territory of each of them, a lateral equidistance often leaves to one of the States concerned areas that are a natural prolongation of the territory of the other.⁸⁹

More specifically, the Arbitration Court did not examine the French claims for the use of equidistance even as a preliminary step and proceeded with its own method of delimitation which consisted of dividing the delimitation area into two different sectors.⁹⁰ In the first sector, the method used was "an equidistant line between Canada and the French islands to a position 24 nautical miles" from the baselines.⁹¹ In the second sector, the Court proceeded in its own unique way with the delimitation, after disregarding completely the equidistance method. The result of the "method" used by the Court was completely unpredictable⁹² and, as critics have pointed out, it is very difficult to point to the *St. Pierre and Miquelon* case in order to demonstrate the advantages of a delimitation based solely on the quest of the Court for an equitable solution. The "very refusal to adopt equidistance as even a starting point tends to bolster the argument in favour of its adoption."⁹³

On the contrary, in the *Jan Mayen* case the ICJ faced a different question. As has been seen, the Court held that the effect of the application of Article 6 and of the rules of customary law was the same in the case of opposite states. Did that mean that the median line was the appropriate boundary for the delimitation, unless another line was required by special circumstances? Denmark answered in the negative. As it explained in its Memorial, Article 6 indicated either the use of the median line or any other boundary justified by special circumstances. Moreover,

89. *North Sea*, §58.

90. *SPM*, §39-41, 64, 66; the two sectors were in reality three, see *infra*, pp.305-306.

91. *SPM*, §69; see also Sep.Opinion Oda, §6.

92. Marston, *MP*, 1993, p.170.

93. Evans, [1], *ICLQ*, April 1994, B. 2; Marston describes the rejection of equidistance as "unsatisfactory," *MP*, 1993, p.166.

the relevant provisions of the 1982 Convention...do not indicate any particular method of delimitation be it a median line, a distance criterion or any other method; the emphasis is on the equitable solution.⁹⁴

And, thus,

in the particular circumstances of the present case, where the character of the opposite geographical entities in all relevant aspects is indeed extremely different, a delimitation method leading to an equitable solution cannot even as a provisional step take as its starting point a median line as claimed by Norway.⁹⁵

The Court dismissed the Danish views. It proceeded by drawing a provisional median line after stating that:

It cannot be surprising if an equidistance/special circumstances rule produces much the same result as an equitable principles/relevant circumstances rule in the case of opposite coasts, whether in the case of a delimitation of continental shelf, or fishery zone, or of an all purpose single boundary.⁹⁶

Thus, equidistance, which was accepted in the *North Sea* case solely as a conventional rule of the Continental Shelf Convention,⁹⁷ returned as part of the combined equidistance/special circumstances rule on an equal footing with the customary law of equitable principles/relevant circumstances.

In prior cases, the Court always expressed the view that the equidistance method was not compulsory under customary international law.⁹⁸ After the *Jan Mayen* case, the question is no longer whether equidistance is a rule of law but, rather, if it can, under "prescribed circumstances," be commanded by a rule of law.⁹⁹ The answer seems to be affirmative in the case of a delimitation between opposite states. In the absence of special circumstances, equidistance is the rule which is actually prescribed by the specific geographical circumstances of the case. If, however, special circumstances exist in the area, then equidistance is used as a starting point.

94. Danish Memorial, Vol.I, §369.

95. Ibid., §370; see also §212.

96. *Jan Mayen* case, §56.

97. *North Sea*, §69.

98. Ibid., §83, 101; *Tunisia-Libya*, §109-110; *Gulf of Maine*, §116-123; *Libya/Malta*, §63-65.

99. *Jan Mayen* case, Sep.Opinion Shahabuddeen, p.137.

6. RELEVANT AND SPECIAL CIRCUMSTANCES ON A DOCTRINAL LEVEL

The difference between the two Tribunals in relation to the delimitation method had direct effects on their position towards the relevant and special circumstances. These two types of circumstances played an important role in both cases although they were not approached by the two Tribunals in an identical way. This was mainly a natural consequence of the fact that the ICJ considered it appropriate to have recourse to a provisional median line, whereas the Court of Arbitration dismissed the use of equidistance, even as a first step for the delimitation, and proceeded with its own method.

What was common ground in both courts was that they started the identification of the special and relevant circumstances with the recognition of the importance of the geographical factors. The ICJ expressed the view that to answer the question of whether the circumstances of the present case required adjustment of the median line, special consideration had to be given "in greater detail [to] the geographical context of the dispute,"¹⁰⁰ a fact acknowledged by the Arbitration Court which said that "geographical features are at the heart of the delimitation process."¹⁰¹ Thus, geography constituted, in both cases, the field in which the two Tribunals mainly sought the circumstances which could affect the delimitation process.

The Court in the *St. Pierre and Miquelon* case had to face the differing views of the two parties concerning the specific principles and criteria which were to govern the delimitation. Both parties agreed that the delimitation should be effected in accordance with equitable principles "taking into account all the relevant circumstances."¹⁰² However, they disagreed as to whether the French islands were special circumstances or not. The invocation by France of Article 6 was rejected by the Court which repeated the view of the *Anglo-French* arbitration that "Article 6 does not provide for equidistance 'tout court' but equidistance when there are no special circumstances."¹⁰³ The Court then adopted a traditional approach according to which special circumstances are related only with the application of Article 6 and the use of the equidistance method. Since the equidistance method was not used, the special circumstances were consequently irrelevant. The Court, having based its deci-

100. *Jan Mayen* case, §59.

101. *SPM*, §24.

102. *Ibid.*, §38.

103. *Ibid.*, §41.

sion on the relevant geographical circumstances, proceeded with its own method of delimitation.

On the contrary, the ICJ in the *Jan Mayen* case did not have the same view concerning the distinction between relevant circumstances and special circumstances of Article 6. It held that the adjustment or shifting of the median line, which was provisionally drawn, was subject to the examination of "every particular factor of the case" which might suggest such an operation. This examination included either the identification of special circumstances or, according to customary law, the investigation of relevant circumstances.¹⁰⁴ The reason for this approach was the fact that the ICJ considered that:

Although it is a matter of categories which are different in origin and in name, there is inevitably a tendency towards assimilation between the special circumstances of Article 6 of the 1958 Convention and the relevant circumstances under customary law, and this is only because they both are intended to enable the achievement of an equitable result.¹⁰⁵

This approach did not mean that the ICJ regarded the special and relevant circumstances as similar in substance. Denmark spoke in its Memorial of the existence of "relevant special circumstances" which have to be taken into consideration in order to achieve an equitable solution.¹⁰⁶ On the contrary, the Court explained that:

Special circumstances are those circumstances which might modify the result produced by an unqualified application of the equidistance principle.

Relevant circumstances...can be described as a fact necessary to be taken into account in the delimitation process.¹⁰⁷

Thus, whereas "'relevant circumstances' may well require the application of equidistance, 'special circumstances' can only operate to exclude it and never to apply it."¹⁰⁸

Nevertheless, the question which arises is why, according to the ICJ, do the two categories of circumstances move towards assimilation? Was it implied that the relevant circumstances were limited to these categories which

104. *Jan Mayen* case, §54.

105. *Ibid.*, §56.

106. Danish Memorial, §212.

107. *Jan Mayen* case, §55.

108. *Jan Mayen* case, Sep. Opinion Shahbuddeen, p.148.

were considered by the ILC and UNCLOS I as special circumstances?¹⁰⁹ In the Preparatory Work and the Geneva Conference of 1958, special circumstances were described in connection with geographical features. On the other hand, relevant circumstances were considered as accommodating, apart from geographical circumstances, elements such as the conduct of the parties, security, defense, the population, and the economy and generally all the different considerations which may be considered to have a relative weight according to the circumstances of each case.¹¹⁰ The answer seems to be that the two categories of circumstances can be assimilated not in their substance but only to the extent that they can ensure the achievement of an equitable result.¹¹¹ Moreover, the category of special circumstances is narrower than the category of relevant circumstances and is included within it. "The factors that are pertinent to a circumstance clearly are wider than those which are special to it."¹¹²

7. PROPORTIONALITY AND DISPARITY IN COASTAL LENGTHS

One of the categories of special and relevant circumstances is proportionality between the coastal lengths and the maritime areas. Differing lengths of coastlines represent the typical and not the special case. They were not given any particular consideration in UNCLOS I and they were not considered as special circumstances. However, they were seen by courts either as a relevant circumstance or as an *a posteriori* test of the equity of the result. In the *Jan Mayen* case, the ICJ went even further. Since it applied the Geneva Convention, it considered that the disparity in coastal lengths was a special circumstance according to Article 6.

(a) *Divergence of Views Concerning Coastal Lengths and Maritime Areas*

As has already been seen, the length of the coastlines in the Aegean Sea is a rather controversial matter. Different figures of coastal lengths have been presented in the past, usually without the necessary justification.¹¹³ However, this is not a rare occurrence in the field of maritime delimitations. Since pro-

109. See in the *Jan Mayen* case, Sep.Opinion Schwebel, p.121, Sep.Opinion Shahabuddeen, p.149.

110. See *North Sea*, §93.

111. See Ajibola, pp.301-303.

112. *Jan Mayen* case, Sep.Opinion Schwebel, p.121.

113. See *supra*, pp.6-7, fn.9.

portionality between the coastal lengths and the maritime areas attributed to the states is a factor which is taken into consideration either in the course of the delimitation process or as the test of the equitableness of the result, there is a tendency between states to improve their case "by extending as far as possible [their] own relevant coastal segments, by shortening those of the other party or by playing on the extent of the relevant area."¹¹⁴

This difficulty is especially heightened when the presence of geographical features such as islands, peninsulas and straits renders difficult, if not impossible, an objective identification of the general direction of the coastlines. The significance of the geographical circumstances can be seen after a comparison between the *Jan Mayen* case and the *St. Pierre and Miquelon* case. Whereas, in the first case, the geographical situation was quite straightforward with an isolated small island and a coast prolonged in one direction,¹¹⁵ in the second case, the presence of the islands of Newfoundland and Cape Breton together with the Cabot Strait, the Gulf of St. Lawrence, the Bay of Fortune and the peninsulas of Burin, Avalon and Nova Scotia offered to the parties a variety of ways to measure the length of the coasts. Thus, each of the states expressed broadly divergent views with regard to the length of the coastlines.

Canada spoke of "an enormous disparity in the coastal lengths of the parties."¹¹⁶ It estimated the total length of its coasts as being 514 miles, whereas the length of the St. Pierre and Miquelon coasts was 24 miles. Thus, it invoked a ratio of coastline lengths of 21.4:1.¹¹⁷ However, it noted that, if the coastal lengths were not measured following the general direction of the coasts but along the sinuosities of St. Pierre and Miquelon and Newfoundland, this would have resulted in a ratio of 70:1.¹¹⁸ France dismissed the Canadian calculations and presented its own figures which were 161 miles for Canada and 24 miles for the French islands. This resulted in a ratio of 1:6.5.¹¹⁹ France took into consideration for its calculations *inter alia* the

114. *SPM*, Diss.Opinion Weil, §24.

115. However, even in that case the ICJ found a slight difference in the lengths of the coastlines. If they were measured along straight lines, Greenland's coasts were 504 km., Jan Mayen's 54.8; if they were measured along the baselines, they were 524 km. for Greenland and 57.8 km. for Jan Mayen, the ratio being either 1:9.2 or 1:9.1.

116. Canadian Memorial, §47.

117. *Ibid.*, see fig.5, p.22, §30.

118. *Ibid.*, p.24, fn.17.

119. French Counter-Memorial, §312.

distance between Scatarie island, which lies on the north coast of Cape Breton island, and Sable island, which is located well off the coast and is isolated from all the other coasts in the area. This segment represented no dry land coasts and the two islands were separated only by considerable expanses of water.¹²⁰

The position of the Court in the *St. Pierre and Miquelon* case was no more objective. It endorsed on general lines the Canadian claims as regards the length of the coastlines and found that the ratio was 15.3:1. Furthermore, it approached the matter of the identification of the relevant maritime areas with "rather remarkable certainty."¹²¹ It held that the size of the area was "to be close to 63,000 square nautical miles."¹²² It is important to note that the two parties declined to present arithmetical figures for the relevant area and preferred simply to give an outline description.¹²³ In these specific geographical circumstances, with coasts extending to the south and east in the open sea, the attempt of the Court to define the area in an exact arithmetical calculation was quite remarkable since "there can be no scientific answer, or even any legal answer, which is clearly defined or objectively valid."¹²⁴

The approach of the Arbitration Court to the concept of proportionality in the *St. Pierre and Miquelon* case is characteristic of the problems that will come to the surface in a future delimitation in the Aegean Sea since the geographical circumstances in these two areas present many similarities. In the Aegean Sea, the problem of the calculation of the coastal fronts is of vital importance. The reason is the divergence of views between Greece and Turkey as to the exact area of delimitation. While Greece wants to limit the dispute only to the areas between the eastern Aegean islands and the Anatolian coasts, Turkey considers as relevant for delimitation the whole Aegean Sea. In the *St. Pierre and Miquelon* case, the Court did not consider the north and east coasts of the French islands, "which did not face on to the area of dispute", as relevant for the delimitation and it treated similarly the opposite Canadian coast lying behind the French islands. Thus, these coasts were excluded from the calculations of the length of the coastlines. Let us suppose

120. French Memorandum, §139; see also Canadian Counter-Memorials, §33-43.

121. La Fayette, *I JourMCL*, 1993, p.101.

122. *SPM*, §93; according to Marston, the selection of the area seemed "flawed" because it included (a) sectors beyond 200 miles from the French islands, and (b) areas of territorial sea over which there were no competing claims, *MP*, 1993, p.165.

123. See French Memorandum, §132-137; Canadian Counter-Memorials, §381-384.

124. *SPM*, Diss.Opinion Weil, §24.

that the disputed area in the Aegean is the area which was claimed by Turkey in 1973 and 1974. This area goes beyond the Greek islands. Should their eastern coasts be excluded from the calculation of the relevant coastlines? If the answer is affirmative, then according to the *St. Pierre and Miquelon* model the Turkish coasts have to be excluded as well since they are facing the coasts of the Greek islands.

The calculation of the coastal lengths is an uncertain process. How should this calculation be carried out? The answer of the Court is that calculations should be according to the general direction of the coasts.¹²⁵ But how simplified must this general direction be? In the case of islands scattered in the delimitation area, as occurred in the *St. Pierre and Miquelon* case, what is the general direction of the coastlines? In this case, the Cabot Strait, which runs for a distance of 57 miles, was included in the calculation of the relevant coastlines since it represented, according to the Arbitration Court, coastlines inside the Gulf of St. Lawrence.¹²⁶ In any case, both Courts were unable to pronounce any specific rules explaining the process of the selection of the relevant coasts. Only the ICJ in the *Jan Mayen* case quite moderately accepted that "the practical implementation of the principle [of proportionality] may sometimes be complicated...by difficulties in defining with sufficient precision which coasts and which areas are to be treated as relevant."¹²⁷ To expect more from the ICJ would have been unrealistic since proportionality is a basic concept in its jurisprudence.¹²⁸ For example, it took thirteen years, three judgments and one international conference for the Court to abandon once and for all the natural prolongation concept in the way that it was adopted in the *North Sea* case. The proportionality test, controversial and arbitrary as it is, will continue to create problems and leave room for different interpretations in maritime delimitations.

**(b) Proportionality in the Course of the Delimitation Process,
or to Check a Result**

In the maritime delimitation jurisprudence, proportionality has been taken into account in the process of effecting a delimitation but also as an *ex post facto* test of its equitableness. In the two cases under examination, pro-

125. *SPM*, Diss.Opinion Gotlieb, §13.

126. *SPM*, §29.

127. *Jan Mayen* case, §67.

128. See also Marston, *MP*, 1993, p.169.

portionality was not considered as the operative principle of delimitation. The boundary was not claimed to be a proportionate boundary and proportionality "did not mean a division of maritime spaces on a proportionate basis."¹²⁹ Thus, the Arbitration Court held that there may be "practical difficulties" which may render it "inappropriate to apply the proportionality test" in the arithmetical form.¹³⁰ In the *Jan Mayen* case, the Court observed that "the law does not require a delimitation based upon an endeavour to share out an area of overlap on the basis of comparative figures for the length of the coastal fronts and the areas generated by them."¹³¹

Despite the fact that on the theoretical level both Tribunals agreed, the solution adopted in each case treats the concept of proportionality in a different way. In the *St. Pierre and Miquelon* case, the Court checked the size of the areas attributed to each party with the disproportionate lengths of the coastlines. The ratio between them happened to be very close. The ratio of the coastlines was 15.3:1 and the ratio of the areas appertaining to each of the parties was 16.4:1.¹³² In the *Jan Mayen* case, the ICJ considered that the disparity of the coastal lengths and the maritime areas generated by them by application of the median line between Jan Mayen and Greenland was "so disproportionate that it has been found necessary to take this circumstance into account in order to ensure an equitable solution."¹³³ Indeed, the ratio of the coastal lengths was more than 9:1 in favor of Greenland, whereas a median line delimitation would have attributed areas to the two states corresponding in a ratio of 1.5:1 in favor of Greenland. The median line was shifted towards the direction of Jan Mayen. The final allocation of the areas to the two states was 3:1 in favor of Denmark.¹³⁴ It is true that the Court could not have reflected accurately a proportionate allocation of maritime areas because the boundary would lie even further than 200 miles from Greenland.¹³⁵ However, in 1984 the Chamber of the ICJ found that the ratio between the coastal fronts of the United States and Canada in the Gulf of Maine, which was 1.38:1, "should be reflected" in the location of the second and, consequently, the third segment of the delimitation line. The corrected median line represented

129. *Jan Mayen* case, Sep. Opinion Weeramantry, p.272, §232 (b).

130. *SPM*, §92.

131. *Jan Mayen* case, §64.

132. *SPM*, §93.

133. *Jan Mayen* case, §65.

134. For the figures, see *Jan Mayen* case, Diss. Opinion Fischer, p.309, §13.

135. Bowett, *Jan Mayen* case, Verbatim Record, CR 93/4, p.17.

a ratio of 1.32:1.¹³⁶ In the *St. Pierre and Miquelon* case, the ratio of the allocated maritime areas represented a proportion of 16.4:1 in place of 15.3:1 and, in the *Jan Mayen* case, 3:1 in place of 9:1. It is difficult to see how this system works.¹³⁷

The question that naturally arises is what is the role of proportionality? In both cases, the differences in coastal lengths were enormous. If they were to have been given proportionate effect, "the relatively minuscule islands would have no continental shelves or fishing zones at all."¹³⁸ The conclusion is that the use of proportionality lies in the hands of every Court. If it wants to make the delimitation a process of delimiting the disputed area in accordance with the ratio between the relevant coasts and the relevant area, it can select "the data on which the arithmetical test is based...so as to confirm a pre-established result."¹³⁹ If it does not want to use the *ex post facto* test in exact arithmetical figures, proportionality gives it *carte blanche* to employ whichever boundary it finds appropriate or "equitable," to use ICJ vocabulary, for unknown reasons. As Judge Schwebel observed:

In Selden's 17th century days, equity was described as the Chancellor's conscience, variable indeed; it was as if the standard of measurement called a foot were to be the length of the Chancellor's foot, 'an uncertain measure'. Nowadays, *equity is to be impressionistically measured by the length of the opposite coastlines*.¹⁴⁰

8. MARITIME PROJECTIONS OF THE COASTS, OR "ONE COAST DOMINATES ANOTHER"¹⁴¹

Directly related to the problem of the selection of the coastal facade for reasons of proportionality is that of the maritime projection of islands. As has already been seen, this question is not irrelevant to the situation in the Aegean Sea. More specifically, the question of the frontal or radial projection is connected with the problem of the maritime extension of the Turkish mainland up to the median line of the Aegean Sea. Will the Anatolian peninsula be

136. *Gulf of Maine*, §222.

137. See also Evans, April 1994, [1], *ICLQ*, 3 a.

138. *Jan Mayen* case, Sep.Opinion Schwebel, who examines the *Jan Mayen* and *Libya/Malta* cases, pp.91-92.

139. *SPM*, Diss.Opinion Weil, §24.

140. *Jan Mayen* case, Sep.Opinion Schwebel, p.126, (emphasis added).

141. Argument of L.Legault, *SPM*, *Pleadings*, Vol. 6, p. 36.

considered to generate an entitlement to the area to the west of the Greek islands? In other words, will the Turkish coasts be allowed to "leapfrog" over the maritime areas belonging to the eastern Aegean islands? If not, will the Greek islands be considered as projecting radially in all directions including the areas to the west as well as between them?¹⁴² The projection of the coastal fronts was considered almost exclusively by the Arbitration Court in the *St. Pierre and Miquelon* case, but in two different ways.

(a) Primary and Secondary Coasts and the Enclave Effect

Canada argued that the coasts project frontally. But what was the meaning of the frontal projection? In the *Libya/Malta* case, Libya denied the Maltese islands the right to extend radially in all directions and considered as relevant only the frontal projection of these coasts that were facing the Libyan coastline. However, the geographical circumstances in the *St. Pierre and Miquelon* case were different from those in the *Libya/Malta* case. The French islands were partially enveloped within the Canadian coasts. Thus, if account had been taken solely of the French coasts which were facing the opposite Canadian coasts, the effect would have been roughly the same as that of a radial projection. The frontal projections of St. Pierre and Miquelon would have faced to the east, north and west of the coastal waters of the surrounding Canadian coasts. For these reasons, Canada argued that not *all* the coasts which project frontally have the same effect. It gave particular emphasis to the "longer coastline of the islands" facing to the west, "not toward the open sea but toward the coastal waters of Newfoundland and the Gulf of St. Lawrence."¹⁴³ A distinction was made between this longer coastline and the "narrow coastal opening" of the French islands to the south which can justify only "a very limited seaward extension" to the French islands.¹⁴⁴ The longer Canadian projections prevailed over and diluted the short southern projection of the French islands.

The entire area to the south of the islands is situated within the converging seaward extensions of two major Canadian coastal fronts, those of Newfoundland and Cape Breton island...The effect is obvious: the strength of the Canadian projection into the waters south of Newfoundland is redoubled and any projection from St. Pierre and Miquelon into

142. See similar questions by Gotlieb in *SPM*, Diss.Opinion, §21.

143. Canadian Counter-Memorial, §479.

144. Canadian Memorial, §396.

the waters of the Gulf approaches is effectively blocked from two different directions.¹⁴⁵

In other words, the Canadian arguments moved along the lines of primary and secondary coasts, ideas first presented by the United States in the *Gulf of Maine* case.¹⁴⁶ This frontal projection reinforced the need for a twelve-mile enclave around the French islands.

The Arbitration Court rejected these arguments:

The Court cannot accept the contention that particular segments of coast may have an increased or diminished projection depending on their length. The extent of the seaward projections will depend, in every case, on the geographical circumstances; for example, a particular coast, however short, may have a seaward projection as far as 200 miles, if there are no competing coasts that could require a curtailed reach.¹⁴⁷

Moreover, the Court rejected the idea advanced by Canada that coasts of dependent islands generate less extensive maritime rights than those of an independent island state.¹⁴⁸

(b) "...Coasts Project Frontally, in the Direction in Which They Face"¹⁴⁹

While the Arbitration Court rejected the theory of secondary and primary coasts, it accepted, on the other hand, the theory advanced by Canada that coasts project in the maritime areas lying directly in front of them.¹⁵⁰ As the Court held, France was entitled "to a frontal seaward projection" towards the south, an area "unobstructed by any opposite or laterally aligned Canadian coast."¹⁵¹ This projection towards the south was measured "by the breadth of the coastal opening of the French islands towards the south."¹⁵² As Judge Weil explained, according to this theory,

coasts must be projected solely in the direction in which they face, i.e., perpendicularly to the general direction of the maritime facade, and that

145. Canadian Counter-Memorial, §480; see also figures 40, 41.

146. See Canadian position in *Gulf of Maine* case, in Politakis, *I JourMCL*, 1993, pp.127-128.

147. *SPM*, §45.

148. See Canadian Counter-Memorial, §481-482.

149. Canadian argument, *SPM*, §59.

150. See Canadian Memorial, §381-384, Counter-Memorial, §475-482. See e.g. map 8.

151. *SPM*, §70.

152. *Ibid.*, §71.

protection must be effected over a length corresponding to the length of the maritime facade.¹⁵³

The application of this theory in the *St. Pierre and Miquelon* case resulted in the corridor or "stem of the mushroom"¹⁵⁴ solution which gave the French islands a seaward projection 188 miles long and 10.5 miles wide. The Court did not offer any explanation for the application of the frontal projection, while at the same time it did not explain on which grounds, or rather on which "projection," it gave the French islands 24 miles of maritime zone to the west¹⁵⁵ and 12 miles to the southeast.

The use of the theory of the frontal projection by the Arbitration Court was quite controversial.¹⁵⁶ First, the court failed to apply this theory in the same way to the southeast coast of the French islands.¹⁵⁷ As was observed by Judge Gotlieb, the court "in granting a western extension to St. Pierre and Miquelon...has given weight to a non frontal projection and contradicted its own proposition that...it is frontal projections which are central to this delimitation."¹⁵⁸ Second, the court ignored any possible effects of the frontal projection of Sable island.

Third, and more important, it considered that the Canadian objections against the southern projection of the French islands were not compelling because "geographically the coasts of Nova Scotia have open oceanic spaces for an unobstructed seaward projection towards the south...in the direction in which they face."¹⁵⁹ It is difficult to see in which direction a coast projects frontally, especially in geographical circumstances such as those in the *St. Pierre and Miquelon* case or in the Aegean Sea where the concavity of the coasts results in frequent changes in their direction. Thus, in this case, the coastline of Nova Scotia and Cape Breton island from Scatarie island up to Cape Sable projects frontally to the south. Nevertheless, it is very difficult to

153. *SPM*, Diss.Opinion Weil, §9.

154. *Ibid.*, §8. See map 9.

155. According to Weil, this line was based on "the principle of radial projection," Dissenting Opinion, §14.

156. See Evans, [1], *ICLQ*, April 1994, 4, who distinguishes between delimitation and entitlement and expresses the view, that whereas entitlement is based on a radial projection in all directions, the method of the court is chosen according to whatever is appropriate in the circumstances of the case.

157. Fabri, *RGDIP*, 1992, p.102.

158. *SPM*, Diss.Opinion Gotlieb, §42.

159. *SPM*, §73.

see how the rest of the coasts of Cape Breton island, which lie from Low Point up to Cape North, project southwards and not to the east or to the northeast. Thus, the frontal projection is in many respects a subjective process, very dependent on the macro-geographical or micro-geographical scale of the coasts in dispute.

In the *Jan Mayen* case, the problem of the radial or frontal projection of the coasts passed unnoticed. The only mention was made by Judge Shahabuddeen who considered as a fact the "radial effect which favours the circular over the linear, [which means that] a given length of a typical island coast will generate a greater continental shelf area than the same length of a typical mainland coast."¹⁶⁰

9. ISLANDS AS SPECIAL CIRCUMSTANCES *PER SE*

Another interesting problem is the question concerning to what extent islands can constitute special circumstances *per se*, more specifically, whether *a priori* a primary component in the delimitation of the relevant geographic region may be a special circumstance simply because of its insular character. This problem has direct consequences for the Aegean Sea since, according to a Turkish view, "les îles sont au premier rang des 'circonstances spéciales'."¹⁶¹

The question was posed by all the parties in both cases. In the *St. Pierre and Miquelon* case, France invoked the use of Article 6 of the Geneva Convention and claimed that the French islands could not be regarded as a special circumstance within the meaning of this article. The reason was, according to France, that these islands were not "incidental features" or "secondary factors" disrupting a delimitation between two mainland states and thus producing inequitable consequences.¹⁶² On the contrary, they constituted the element of the dispute. Canada rejected this argument and expressed the view that, even if Article 6 had been applicable rule, the two islands were a special circumstance, as understood in the *Anglo-French* arbitration, since they "lie on the Canadian shelf, or in the Canadian Economic Zone" in the same way that the Channel islands "lie on the French shelf."¹⁶³

160. *Jan Mayen* case, Sep. Opinion Shahabuddeen, p.183.

161. Yolge, 1989, *The Aegean Issues: Problems and Prospects*, p.140.

162. French Memorial, §183.

163. Canadian Counter-Memorial, §506; also Fig.9, p.30.

As has already been seen, the Court in the *Canadian-France* arbitration did not examine whether there were any special circumstances in the case and, thus, it did not enter into the substance of this specific disagreement between the two parties.¹⁶⁴ It simply rejected the Canadian argument concerning the precedence of the *Anglo-French* arbitration.¹⁶⁵ Only by implication can it be concluded that the Court, by recognizing the right of islands to generate maritime zones through the medium of their coasts, did not accept that the two French territories constituted special circumstances.

In the *Jan Mayen* case, Denmark expressed the view that Jan Mayen was an incidental special feature which lay on the wrong side of a delimitation line between Greenland and mainland Norway.¹⁶⁶ Norway, on the contrary, contended that the coasts of Greenland and mainland Norway did not constitute the appropriate legal framework for the delimitation. According to the Norwegian view, the island of Jan Mayen could be considered as an incidental feature only if it were distorting a median line fixed by reference to the primary components of the geographical region. In this specific case, the island of Jan Mayen was not "an 'incidental feature' but a principal element of the legal framework."¹⁶⁷ Therefore, the reference to the median line had no basis in legal reasoning.¹⁶⁸ The ICJ remained silent with regard to the special character of Jan Mayen. It preferred to refer to other relevant circumstances which were present in the area instead of expressing a view as to whether Jan Mayen was a special circumstance *per se*. Can the Court's silence suggest that it did not attach any importance to the theory that islands are conceived to be of themselves a special circumstance?

The views of the two parties concerning the median-line, the delimitation between two mainlands and the primacy of the islands resemble in many respects the *Aegean Sea* case. According to the Turkish view, Greece limited the *Aegean Sea* case to the eastern Aegean islands and not to a delimitation between the two mainlands.¹⁶⁹ Greece, on the other hand expressed the view that "the dispute is confined to the continental shelf adjacent to the [eastern Aegean] islands and does not concern any other part of the Aegean Sea or the

164. *SPM*, Diss.Opinion Weil, §48.

165. *SPM*, §42.

166. Danish Reply, Vol.I, §299; however, this view was not pursued in the oral arguments.

167. *Ibid.*, §502.

168. Norwegian Counter-Memorial, Vol.I, §494.

169. Turkish Observations in *Aegean Sea* Pleadings, p.70, § 9.

seabed thereof.”¹⁷⁰ As in the *Jan Mayen* case, the problem was not the presence of an islet or an incidental feature which could distort the median line between two opposite mainland coasts. The Aegean islands are one of the two primary components in the delimitation.

In both cases, St. Pierre and Miquelon and Jan Mayen were in themselves not incidental physical features or “accidents” of one of the coasts involved, but constituted “the cause and the subject of the delimitation.”¹⁷¹ Nevertheless, the view that the islands were *per se* special circumstances shows the confusion that can exist because of the assimilation of the vocabulary used to describe these circumstances. The special circumstances of the 1958 Convention became “relative circumstances creative of equity” in customary international law.¹⁷² It is true that “the presence of islands” was considered in the *travaux préparatoires* of the Geneva Convention as a special circumstance.¹⁷³ It is equally true that jurisprudence considered the presence of islands as constituting a special circumstance when these islands, being in a particular geographical position, were distorting markedly the effect of an equidistance line in a delimitation between two other coasts.¹⁷⁴ Moreover, there can be cases where the relationship between an island and a mainland can be considered as a relevant circumstance.¹⁷⁵ But this relationship in no way means that an island is automatically a special circumstance. An island was never “conceived to be of itself a special circumstance which affects its own coastal projections.”¹⁷⁶ In any case, both Tribunals refrained from dismissing clearly the view that islands, which were primary elements in the delimitation, constituted *per se* special circumstances simply because of their insular character. The only indication that this question was answered in the negative was when the courts accepted that islands are entitled to generate their own maritime zones.

170. *Ibid.*, p.10, §29.

171. *SPM*, Diss.Opinion Weil, §48. See maps 9, 10.

172. French Counter-Memorial, §344.

173. *YBILC*, 1953, Vol.II, p.216; see also *supra*, pp.73-75.

174. *North Sea*, §57; *Anglo-French* arbitration, §181-183; *Gulf of Maine*, §201, 210; *Libya/Malta*, albeit in doctrine §72. See also diagrams in the *North Sea* Pleadings, Vol.II, p.29, and figures 8.7 and 8.9 in Jayewardene, 1990, pp.353-354.

175. See similar problem in *Jan Mayen* case, Sep.Opinion Shahabuddeen, pp.188-190.

176. *Jan Mayen* case, Sep.Opinion Schwebel, p.123.

10. SECURITY, DEFENSE AND NAVIGATION CONSIDERATIONS

As has been indicated in previous chapters, security, defense and navigational considerations seem to have a primary importance in the Aegean Sea dispute. After the observation of the ICJ in the *Libya/Malta* case that security considerations are related to the concept of the continental shelf,¹⁷⁷ it was natural for the states involved in the two judgments under consideration to invoke arguments based on these issues. The proximity of the delimitation line to the coast of one or the other state was a point on which all the parties, with the exception of Denmark, agreed in their arguments.

The security factor...arises from the unacceptability of the dominant presence of State A in a maritime area of more vital and immediate interest to State B.¹⁷⁸

It is important to provide the islands with sufficient means and space around their territory to guard against outside threats.¹⁷⁹

The drawing of a boundary closer to one State than to another would imply an inequitable displacement of the possibility of the former State to protect interests which require protection.¹⁸⁰

Among the arguments used by the parties in both cases, one of the Canadian arguments can also be related to the Aegean Sea. It was argued that NATO-allocated areas of defense responsibility and the comprehensive range of activities that a state undertakes in the exercise of its coastal state sovereign rights and jurisdiction within the maritime zones cannot be separated.¹⁸¹ NATO responsibility for the whole of the Aegean Sea is assigned to Greece.¹⁸² Another relevant argument concerned the responsibility for maritime search and rescue services. In the St. Pierre and Miquelon area, these were provided by Canada, while in the Aegean they are provided by Greece.¹⁸³ Similar arguments were used by Norway as concerns assistance and rescue of vessels around Jan Mayen island.¹⁸⁴

177. *Libya/Malta* case, §51.

178. Canadian Memorial, §429.

179. French Memorandum, §226.

180. Norwegian Counter-Memorial, §565.

181. Canadian Memorial, §190.

182. See *supra*, pp. 20-21.

183. Canadian Memorial, §199-202; see *supra*, pp. 266-268.

184. Norwegian Counter-Memorial, §586-587.

Also, arguments similar to the Turkish ones were used by France in relation to its navigation interests. More specifically, France believed that the shipping and port activities of St. Pierre and Miquelon islands should be able to be conducted without obstruction and argued that this would not transpire if these islands were to be offered a limited zone of twelve nautical miles.¹⁸⁵

Nevertheless, the two Tribunals ignored almost entirely issues of defense, security and navigation.¹⁸⁶ The main reason seems to be the friendly relations between the countries involved in the disputes and the fact that no actual threat existed. For example, France considered in its arguments that "threats would not come from Canada, given the friendship that has traditionally existed between France and Canada."¹⁸⁷ It also linked the problem of security not with military threats but with the undefined "desire to ensure the ecological security of the waters in the zone."¹⁸⁸ Norway linked the problem of security with "the protective interest which a coastal State has in relation to maritime areas and their resources,"¹⁸⁹ while Denmark spoke about its "good relations" with the neighboring kingdom.¹⁹⁰ It is clear that arguments based on defense, security and navigation could not have any particular weight in both cases.

However, in the *Jan Mayen* case, the ICJ found the opportunity to include security considerations among the "other circumstances" which may affect the position of the boundary line.¹⁹¹ It considered that the observation of the Court in the *Libya/Malta* case that security considerations are related to the continental shelf "constituted a particular application to the continental shelf...of a general observation concerning all maritime spaces."¹⁹²

The question in the Aegean Sea is similar to a certain extent to the problem in the *St. Pierre and Miquelon* case. The French islands were so close to the Canadian coasts that security and defense considerations could be claimed by both countries on almost an equal footing. In the Aegean Sea, Greece claims that a threat to its eastern islands exists as a result of the

185. Compare with similar Turkish views, *supra*, pp.108-110.

186. See criticism by Weil in *SPM*, Diss.Opinion, §33.

187. *Ibid.*, §226.

188. *Ibid.*, §227.

189. Norwegian Rejoinder, §542.

190. Danish Reply, §324.

191. *Jan Mayen* case, §71.

192. *Ibid.*, §81.

Turkish behavior since 1974. Turkey equally argues that the islands constitute a threat to the security of its western coasts and gives as its supporting example the Greco-Turkish war of 1919 to 1922. The proximity of the islands to the Anatolian coasts renders impossible a "proper" application of the requirement of the ICJ in the *Libya/Malta* and *Jan Mayen* cases that

a certain width was necessary to every coastal State, from a positive point of view, in order to assure it the control of the resources of the sea and guarantee its security and, from the negative standpoint, in order to prevent third States from coming to explore, exploit, drill or fish much too near to its coast.¹⁹³

The only possible solution seems to be a delimitation line at an equal distance from the coasts of the two parties. This, however, does not solve the problem of the maritime spaces to the west of the Greek islands.

11. SOME SPECIFIC CATEGORIES OF SPECIAL/RELEVANT CIRCUMSTANCES RELATED TO THE AEGEAN SEA

(a) Landmass

A potential problematic factor in the Aegean Sea dispute is the enormous difference between the landmass lying behind the Anatolian coast and that of the eastern Aegean islands. As has already been seen in the *Libya/Malta* case, one of the Libyan arguments referred to the difference between the size of Libya and Malta and reached the conclusion that Libya was entitled to a greater coastal extension because of the greater landmass behind its coast.¹⁹⁴ International jurisprudence did not find in this case or in the *Guinea/Guinea-Bissau* case that the size of the landmass could be considered as a circumstance relevant to a delimitation.¹⁹⁵ However, as has already been seen, indirect references related to the size of the Maltese islands appeared in the judgment which permitted landmass to enter as a relevant circumstance through other doors.

Thus, it would have been unexpected, because of the difference between the sizes of the opposing territories in the two cases under examination, if the parties possessing the greater landmass had not used arguments related to the sizes of the territories. Canada repeated continuously the expression "exi-

193. *SPM*, Diss.Opinion Weil, §31.

194. See *supra*, pp.228-229.

195. *Libya/Malta*, §49, *Guinea/Guinea-Bissau*, §118.

guous territory" for the islands of St. Pierre and Miquelon.¹⁹⁶ Denmark was more specific. Its reference to the ratios of the lengths of coasts involved elements of landmass reasoning.¹⁹⁷ Moreover, the fact that Greenland is 5,800 times larger than Jan Mayen was used to support an argument based on the proportion of land area to maritime zones.¹⁹⁸

The Court in the *St. Pierre and Miquelon* case did not examine the submissions of the parties in connection with the size of the landmass. As Judge Weil noted in his Dissenting Opinion, the Court, by not entertaining for a moment the Canadian argument, confirmed "the categorical rejection of that type of consideration repeated in the *Libya/Malta* and the *Guinea/Guinea-Bissau* decisions."¹⁹⁹ The ICJ unequivocally repeated that the attribution of maritime areas to the territory of a state "is a legal process based solely on the possession by the territory concerned of a coastline." Therefore, the size of Jan Mayen was not a circumstance that affects the delimitation.²⁰⁰ Moreover, the factor of proportionality applies only to coastlines and not to landmass, where only the coastal length matters.²⁰¹

(b) Political Status of Islands

In the *St. Pierre and Miquelon* case, Canada used several arguments based on the location of the French islands in an entirely different region than the mainland state. This approach was not novel.²⁰² The distance between the islands and the mainland can be considered as a relevant circumstance in the delimitation. For example, in the *Libya/Malta* case, Malta described the situation of the Channel islands as one of "extreme dislocation."²⁰³ In the past, these arguments were mainly connected with the vital interests and security of a state. On the contrary, in the *St. Pierre and Miquelon* case, the Canadian arguments in relation to the position of the islands were connected with their political status. Canada described the location of the French islands as a "geopolitical anomaly"²⁰⁴ and it expressed the curious view that the French

196. See *SPM*, Diss. Opinion Weil, §44.

197. Verbatim Record Thamsborg, CR 93/1, pp.43-64; also Brownlie, CR 93/7, p.71.

198. Danish Memorial, §296-301.

199. *SPM*, Diss. Opinion Weil, §44.

200. *Jan Mayen* case, §80.

201. See *Jan Mayen* case, Sep. Opinion Weeramantry, pp.272-273, §231.

202. See *Anglo-French* arbitration, §184, 186, 198; *Libya/Malta*, §72.

203. Maltese Counter-Memorial, Vol.I, §211.

204. Canadian Memorial, §398.

islands were "unsupported by any mainland coast of the metropolitan power."²⁰⁵ Whereas France and Canada were seen as two equal sovereign states, the relation between Canada and St. Pierre and Miquelon was considered as one of a "single sovereign State...and a distant dependency of another" or a delimitation between "a fragment and the main body of a country."²⁰⁶ Although the distance between the two French islands and France is far greater than the distance between the eastern Aegean islands and the mainland of Greece, this discussion of the relevance of the political status of islands when they lie at a significant distance from the mainland territory is interesting.

Canada expressed the view that, under international law, a dependent island must be treated in a different way than an island state. As it explained, because of the "uniquely close links that bind an island State to the sea, its adjacent waters are readily seen as an essential attribute of its Statehood and national existence." Therefore, an island state is entitled to a bigger area of maritime zone in comparison with a politically dependent island located a great distance from the mainland state.²⁰⁷ France, on the contrary, spoke of the equality in legal entitlement and the consequent equality in the extent of seaward jurisdiction. Since sovereignty is both "unique and indivisible, a state's rights apply in the same way to all territories under its sovereignty and, therefore, to the maritime areas abutting them."²⁰⁸ Thus, the great distance separating the two French territories of St. Pierre and Miquelon from the French mainland does not run counter to the uniqueness of the French territory. The delimitation "concerns France as a State in exactly the same way as it concerns Canada."²⁰⁹

The Court of Arbitration dismissed the Canadian claims. It held that, since no distinction was made by the Geneva Conventions or Article 121 of the LOSC as to different categories of islands being independent states or dependent territories, "there are no grounds for contending that the extent of the maritime rights of an island depends on its political status."²¹⁰ This categorical position seems to be, at first sight, against what the ICJ said in the

205. Canadian Counter-Memorial, §56.

206. *Ibid.*, §324.

207. *Ibid.*, §334.

208. French Memorial, §109.

209. *Idem.*

210. *SPM*, §49.

Libya/Malta case.²¹¹ According to Weil, however, the ICJ in that case was faced with the opposite question, namely, not whether the dependant status of an island should cause a reduction of its maritime territory, but whether there had to be an "extension to island States of the modulation until then applied to dependant islands."²¹² However, the view of the Court of Arbitration that the political status of an island is irrelevant to the extent of its maritime territory was criticized by Gotlieb.²¹³

(c) Cultural Factor

One of the Danish arguments used in the *Jan Mayen* case concerned the so called "cultural factor." This consisted, according to the wording of the Court, of the "attachment of the people of Greenland to their land and the surrounding area."²¹⁴ Thus, the "cultural factor" resembles in many respects what Greece calls the "Greek identity of the islands" and the "historical, ethnological or cultural" title over them.²¹⁵

As Denmark mentioned, "the people of Greenland feel closely attached to their land and the surrounding sea which for approximately 4,500 years... have sustained the life of the people." This factor represented a "subjective element" of major influence since "it would be difficult if not impossible for the Greenlanders to understand why the sea area off the coast of East Greenland which lies within the 200-mile boundary...should be curtailed" by a foreign state.²¹⁶ The ICJ did not attach any importance to this factor and did not consider it as a circumstance to be taken into account.²¹⁷ However, it has to be pointed out that it is more difficult to explain the feeling of attachment of a population in an area lying 200 miles from their homeland, as was the case with Greenland, than that of a population in an area lying within a distance of only ten or fifteen miles of it, as is the case with the Aegean Sea.

211. "It might well be that the sea boundaries in this region would be different if the islands of Malta did not constitute an independent State but rather formed part of the territory of the surrounding countries," *Libya/Malta*, §53.

212. *SPM*, Diss.Opinion Weil, fn.46.

213. *SPM*, Diss.Opinion Gotlieb, §55-59.

214. *Jan Mayen* case, §79.

215. See *Threat in the Aegean*, pp.9-10.

216. Danish Memorial, §313.

217. *Jan Mayen* case, §82.

12. CONCLUSION

The foregoing examination of the two recent cases has one aim: The identification or description of as many rules of international law as possible that are potentially relevant to the delimitation of the Aegean continental shelf. Despite the problems that can be created by the specific circumstances of each case, this attempt is not something superficial. Paraphrasing Canada, it can be said that an objective rule is a rule which gives equal titles to states and an equal capacity to generate maritime rights in similar circumstances.²¹⁸

In general, it can be noted that the difference between the approach of the *ad hoc* Court in the *St. Pierre and Miquelon* case and of the ICJ in the *Jan Mayen* case is characteristic of the advantages that can be offered by the existence of a method of delimitation which can serve even as a mere provisional step. According to the ICJ in the *Gulf of Maine* case, each case is a *uniquum*. Since this position is generally accepted by jurisprudence, the result of each delimitation varies according to the relevant or special circumstances which exist in the delimitation area. However, the solution in the *St. Pierre and Miquelon* case was not only unpredictable; it was unreliable and questionable, especially as to whether it gave rise to a rule that can be applied in maritime delimitations and that would serve the need "for consistency and a degree of predictability" that was pronounced by the ICJ in the *Libya/Malta* case.²¹⁹ It raised the concern that the Court's decision was based on considerations "unsupportable in international law"²²⁰ which were related more to the "chancellor's foot" or to the "eye of the judge."²²¹ The non-existence of any normative rule and the lack of any starting point were the main characteristics of a "method" which was also a *uniquum* and represented, in the words of Judge Oda in the *Tunisia/Libya* case, "the principle of non principle."²²² On the contrary, the use of the median line as a starting point of the delimitations is a welcome sign. As the Arbitration Court said in 1977, it is better "to seek a solution in a method modifying or varying the equidistance method rather than to have recourse to a wholly different criterion of delimitation."²²³

218. See Canadian Counter-Memorial in *SPM*, §293.

219. *Libya/Malta*, §45.

220. *SPM*, Diss.Opinion Gotlieb, §36.

221. Weil repeating Judge Gros, fn. 22, *SPM*, Diss.Opinion.

222. *Ibid.*, fn.21.

223. *Anglo-French* arbitration, §249.

The *St. Pierre and Miquelon* case can be considered as a typical example of a delimitation on a case-by-case approach, which suffers from "equidistance-phobia" or as one "inherently allergic to the median line" to paraphrase Weil.²²⁴ Jurisprudence of this kind seeks to always discover, create or invent "new" methods in order not to use the median line even as a starting point. It is unknown how long this conception of delimitation can survive.

With regard to the signs that equidistance is to be used as a starting point, some comments have to be made concerning the views of the ICJ on this method and on special circumstances. Despite the fact that it is quite clear from the drafting history of Article 6 of the Continental Shelf Convention that there was one rule, equidistance, and one exception, special circumstances, the Court in the *Jan Mayen* case, following, probably, the precedent of the *Anglo-French* arbitration, combined the two concepts into one rule. While it is true that special circumstances may arise quite often in such a way as to render the use of equidistance in Article 6 quite flexible, it has to be noted that "the flexibility of a rule is not a reason for denying its existence."²²⁵ Thus, the view expressed by Judge Shahabuddeen seems quite right, namely, that the ICJ proceeded with a "hasty attempt to liquidate that part of the 'combination' which is indisputably a rule and to supplant it by that part which is clearly an exception, and to do so without saying, because it cannot be said that the exception is repugnant to the rule."²²⁶

In any case, and whatever the criticism and the weak points of the decisions might be, it seems that in the future the equidistance line, in the case of opposite states, which is actually the case in the Aegean Sea, is to be taken at least as a provisional step or as a starting point in each delimitation, either under the 1958 or the 1982 conventions or under the rules of customary international law.²²⁷

224. Public Hearings of the *Jan Mayen* case, CR 93/8, p.44.

225. *Fisheries Jurisdiction*, (U.K. v. Iceland), 1974, Sep.Opinion de Castro, p. 96.

226. *Jan Mayen* case, Sep.Opinion Shahabuddeen, p.144.

227. Evans, April 1994, [1], *ICLQ*, 2.

10. 1993-1996: Aegean Warriors and "Gray" Territories

A. 1993-1995: PROBLEMATIC RELATIONS

1. THE SECOND PAPANDREOU ADMINISTRATION

After three-and-a-half years in power, conservative New Democracy leader Constantine Mitsotakis was defeated by the PASOK party, headed by Andreas Papandreou who regained power following general elections held in Greece in October 1993. As is usual in these cases, the Turkish premier and foreign minister congratulated their Greek counterparts and expressed the hope that joint efforts would be exerted to further the relations between the two countries by means of specific and meaningful dialogues.¹

Of course, in practice nothing changed. For example, a few days after the congratulations, Greece announced that at least twenty F16 and F4 Turkish fighter planes entered the Athens FIR without submitting a flight plan and the Greek forces intercepted them.² On 4 November 1994 during a NATO Conference in Larissa, Greece, concerning the conditions for the establishment of NATO air force headquarters, the Turkish general at the Izmir headquarters asked that the Aegean be divided so that Turkey has control of information exchange and air defense east of 25 degrees longitude, which means practically half of the Aegean.³

By late October, Greece adopted the so-called Greece-Cyprus joint defense. This doctrine meant that Cyprus was included within Greek defense planning. The joint defense doctrine was regarded by Greece as a natural consequence of its commitment to Cyprus that any Turkish advance on the island would be considered *casus belli* between Greece and Turkey. According to the leaders of Greece and Cyprus, this doctrine was a political choice which "will not change as long as the present *status quo* is maintained on the island."⁴

1. BBC-SWB, 16 October 1993, p.B 6, [17].

2. BBC-SWB, 23 October 1993, p.B 4, [13].

3. BBC-SWB, 8 November 1993, p.B 7, [20].

4. BBC-SWB, 18 November 1993, p.B 7, [14]; see also Press Conference by Cypriot President Glafkos Clerides in BBC-SWB, 22 November 1993, pp.B 7-8, [18].

Another issue that was raised during this period and which still dominates to a certain, though limited, extent in the relations of the two countries concerned Turkish accusations that Greece supports the Kurdistan Workers Party (PKK). These accusations first came from the Turkish Ministry of Foreign Affairs and were repeated by many Turkish officials.⁵ Later in 1994, Turkish President Suleyman Demirel addressed a letter to his Greek counterpart on this issue.⁶ Constantine Karamanlis rejected Turkish allegations about the training of terrorists on Greek soil and condemned terrorism in whatever form it appears.⁷ On this point, it has to be noted that it is true that Greece has not banned the PKK on its soil as Germany and France have. Nevertheless, no office of the PKK operates in Greece.⁸ Although there are a number of Kurdish refugees who had been given political asylum, their activities are legal and allegations of the existence of paramilitary camps in Greece for the training of the PKK members were never proven.⁹

On 10 January 1994, the Greek foreign minister announced to the secretary general of the United Nations that Greece recognized as "compulsory *ipso facto* and without special agreement, on condition of reciprocity, in relation to any other state accepting the same obligation" the jurisdiction of the ICJ. Since a similar declaration made by Turkey has expired, the reciprocal character of the Greek declaration does not apply *prima facie* to Greek-Turkish relations. If Turkey reaccepts the jurisdiction of the Court in the future, disputes between the two countries can be referred to the ICJ. Under the present circumstances a special agreement between the two countries has to be concluded.

However, the Greek government excluded from the competence of the Court any dispute relating to "defensive military action taken by the Hellenic Republic for reasons of national defense." It is obvious that what the Greek government wanted to exclude from the compulsory jurisdiction of the ICJ was the issue of the demilitarization of the eastern Aegean islands. The Greek

5. BBC-SWB, 8 December 1993, p.B 8, [18].

6. BBC-SWB, 9 June 1994, p. B 9, [32].

7. See *To Vima* (Athens newspaper), 19 June 1994; also BBC-SWB, 17 June 1994, p. B 5, [9].

8. See statement of the Greek government spokesman, BBC-SWB, 9 June 1994, p.B 6.

9. See also Turkish discomfort due to the visit of the president of the self-proclaimed exiled Kurdish parliament which resides in the Netherlands, *Kathimerini* (Athens newspaper), 4 July 1995; also *Kathimerini*, 18 July 1995; also *The Observer* (London newspaper), 28 September 1997.

declaration is to remain in force for a period of five years. Upon the expiry of that period, it will continue to have effect until notice of its termination is given.

2. STALEMATE ON THE CONTINENTAL SHELF AND THE DIALOGUE

The question of the exploration and exploitation of the Aegean continental shelf came to the surface when in January 1994 it became known that the international consortium which was already exploiting the Prinos oil fields off Thassos had started to explore some areas of continental shelf west of Thassos. The Turkish press expressed its concern that this activity might lead to an incident similar to that of March 1987. The revelation of the research coincided with the extension of compulsory military service in Turkey, an extension which was decided due to the war taking place in southern Turkey between the army and PKK members. Nevertheless, some Turkish analysts suggested that this extension was connected with the Aegean activity of the consortium.¹⁰

Papandreou explained that the exploration activity was taking place within Greek territorial sea.¹¹ The spokesman of the Turkish Foreign Ministry expressed Turkish satisfaction with this event. He also found the opportunity to unearth the Bern Agreement by saying that Turkey welcomed the fact that Greece abides by the terms of the above-mentioned document by not conducting any research outside Greek territorial sea.¹² The Turkish statements were dismissed by Greece.

Nevertheless, the issue of the Bern Agreement was again mentioned in August 1994 when the well-known hero of the previous crises, the scientific ship *Piri Reis*, concluded its annual research within Turkish territorial waters and began its work in the high seas of the Aegean. The Turkish Foreign Ministry spokesman Ataman stated that the scientific research to be conducted by the ship was not directed towards the continental shelf. The reason was that

10. *Kathimerini* (Athens newspaper), 11 January 1994.

11. Interview on 17 January 1994, ANA, *Daily Bulletin*, 18 January 1994; see also the interest shown by ex-U.S. President George Bush in the potential oil fields in the Bournas area ten miles off the island of Thassos, *Kathimerini* (Athens newspaper), 16 June 1995.

12. *TDN*, 20 January 1994.

Turkey and Greece had undertaken under the Bern Agreement the obligation to refrain from exploiting the continental shelf. In line with this obligation, both countries have "taken care not to conduct activities directed towards the continental shelf and the oil reserves beyond the territorial waters of the Aegean."¹³

The Greek Foreign Ministry spokesman rejected the Turkish position regarding the Bern Agreement of 1976 as being contrary to its letter and spirit. That agreement "leaned towards referring the issue of drawing the continental shelf's boundary to the ICJ." The fact that this did not happen because of Turkey rendered the Bern Agreement as inapplicable between the two countries.¹⁴

Concurrently with these developments concerning the Bern Agreement, Turkish officials kept asking Greece to proceed to meaningful negotiations. Greece finally replied by setting certain conditions, namely that:

- no dialogue can take place on Greek-Turkish relations as a whole because the only difference between the two countries concerns the limits of the Aegean continental shelf,

- the delimitation of the Aegean continental shelf has to be referred to the ICJ,

- unilateral Turkish pursuits such as violations of the Greek national airspace and the Athens FIR or violations of international law cannot be discussed,

- other issues needing discussion outside this framework are welcomed, and

- there can be no form of bilateral dialogue as long as Turkey continues its provocations in the Aegean.¹⁵

This last condition probably referred to some remarks that Turkish Prime Minister Tansu Ciller made in connection with Greece. In an interview with a Turkish daily, Ciller spoke about "landing on the Greek islands if Athens extends its territorial waters to twelve miles."¹⁶

13. *BBC-SWB*, 12 August 1994, pp. B 7-8, [17].

14. *BBC-SWB*, 13 August 1994, p. B 4, [9].

15. *BBC-SWB*, 24 June 1994, p. B 9, [25].

16. *BBC-SWB*, 11 June 1994, p. B 9, [21] and p. B 10, [23].

In any case, the dialogue between the two countries in the period between 1993-95 did not take place despite several efforts by the U.S. In September 1995, the two countries were very close to starting a preliminary discussion on Greek-Turkish relations. This discussion was supposed to take place in New York on the sidelines of the 1995 Session of the U.N. General Assembly. It was obvious that the two countries were going to the negotiating table with totally opposing views. Turkish Foreign Minister Erdal Inonu demanded that the Greek government not take any unilateral decision in relation to the Aegean status quo¹⁷ and his Greek counterpart Karolos Papoulias wanted to discuss economic and political cooperation between the two countries in the EU.¹⁸ The presence of skillful American diplomats such as Richard Holbrooke was evidence that the U.S. was going to press both sides very hard. Nevertheless, a few days before the meeting Turkish Prime Minister Ciller resigned. The presence of strong governments on both sides of the Aegean is a *conditio sine qua non* for the success of any negotiation. The meeting between the two foreign ministers was bogged down.¹⁹

3. PROBLEMS OF NAVIGATION IN THE TURKISH STRAITS

In July 1994, a new problem emerged in Greek-Turkish relations: that of navigation through the Turkish straits. This issue is not simply another bilateral problem between Greece and Turkey. It also involves other countries such as Russia, the states bordering the Black Sea and the signatories of the Montreux Convention. Although not directly related to the bulk of Greek-Turkish relations these factors have to be taken into account since they have obvious consequences regarding the maritime traffic in the Aegean Sea.

(a) *The New Turkish Regulations*

Since 1936, navigation in the Turkish straits has been based on the Montreux Convention. Nevertheless, this convention never addressed contemporary problems of pollution, safe passage at sea and the protection of the environment. The Montreux Convention needed to be amended at least at a certain technical level since this was the "only way to stop the arbitrary,

17. *Kathimerini* (Athens newspaper), 21 September 1995.

18. *To Vima* (Athens newspaper), 17 September 1995.

19. *Kathimerini* (Athens newspaper), 30 September 1995.

interpretative initiatives, however necessary, that Turkey has taken each time that it was practically impossible to apply the agreement."²⁰

The revision of the Montreux Convention never took place. In May 1993, during the 62nd Session of the International Maritime Organization, the competent specialized agency of the U.N., Turkey asked for the establishment of a Traffic Separation Scheme due to the increased number of accidents in the straits. On 15 November 1993, the Turkish Council of Ministers decided to adopt a new Code of Regulations on maritime traffic through the Turkish straits and more specifically through the Bosphorus, the Sea of Marmara and the Dardanelles.²¹ The new regulations were to be effected on 1 July 1994 with "the aim of ensuring safety of voyage, life, property and environment."²² However, in April 1994 before the new regulations were in effect the Turkish authorities refused to allow the Greek ship *Olympic Armour II* to enter the straits.²³ The same attitude was followed towards four Russian ships.²⁴

During the next session of the Maritime Safety Committee of the IMO in May 1994, Turkey submitted certain rules concerning navigation and passage through the straits but not the Code of Regulations that the Council of Ministers had adopted some months earlier.²⁵ The Maritime Safety Committee decided unanimously on the adoption of certain "Rules and Recommendations on navigation through the Strait of Istanbul, the Strait of Canakkale and the Marmara Sea."²⁶ The Rules and Recommendations were to take effect after 25 November 1994. Turkey considered the decision of the Maritime Safety Committee to be no different from its own Code of Regulations and

20. Rozakis and Stagos, 1987, p.136.

21. "Bogazlar ve Marmara Bölgesi Deniz Trafik Düzeni Hakkında Tüzük," Nr. 93/5051, *OfTuGaz*, Nr. 21815, 11 January 1994. The examination of the Turkish Regulations was based on an unofficial English translation.

22. See Article 58 of the Turkish Regulations; see also *BBC-SWB*, 2 July 1994, B/7 (20).

23. Greece addressed two *notes verbales* to Turkey about the incident on 25 April 1994 and on 23 June 1994 in Bredhimas, *The Aegean Sea and the New Law of the Sea*, 1996, p.129, fn.12.

24. The ships were the *Cuban*, *Novocentrol*, *Portion* and *Bagramian* in Nikolaou, 1995, p.131; according to same source, the economic losses were \$128,000 in total.

25. IMO, Maritime Safety Committee, 63/7/2; see also Bredhimas, *The Aegean Sea and the New Law of the Sea*, 1996, p.129; Nikolaou, 1995, p.121, fn.221.

26. IMO, SN/Circ.166/1 June 1994.

adopted some minor changes.²⁷ On 1 July 1994, the new Turkish Regulations began to be enforced.

Greece together with Russia immediately raised the issue. Russia described the new Regulations as unacceptable and stressed that Russian ships would ignore them. Greece said that it would follow the implementation of the new Regulations closely and stressed that every relevant regulation had to be in accordance with international law.²⁸ The Turkish Foreign Ministry spokesman answered these statements by advising all ships that sailed through the straits to abide by the new straits Regulations to the letter. He also pointed out that a position to the contrary would not be accepted and that the legal liability such a position might create would belong to the country whose flag is carried by the ship which does not abide by the new rules.²⁹

As a result of this divergence of views, Greece addressed a *note verbale* to Turkey and expressed the opinion that the new Turkish Code of Regulations contravened the Montreux Convention, international law and the recommendations of the IMO made in May 1994.³⁰ Concurrently, Russia submitted the whole issue to the Legal Committee of the IMO.³¹ The Legal Committee discussed the Turkish Code of Regulations in October 1994. During these discussions, most of the members of the Committee considered that the Turkish Regulations were not in conformity with the May 1994 Rules and Recommendations of the IMO.³²

The Maritime Safety Committee reexamined the matter in its May 1995 session. Greece, Russia, Cyprus and Ukraine, as well as Bulgaria and Romania, repeated their views concerning the Turkish Regulations.³³ The president of the session simply repeated the views already expressed in the previous session, namely that the regulations and recommendations of the IMO aimed

27. *OfTuGaz*, Nr. 21815, 21 June 1994; see also answer to the Greek *note verbale* of 29 May 1994 in Bredhimas, *The Aegean Sea and the New Law of the Sea*, 1996, fn.73.

28. *BBC-SWB*, 2 July 1994, B/6 (18).

29. *BBC-SWB*, 11 July 1994, B/8 (22).

30. *Note verbale*, 2551 of 29 May 1994; see also *To Vima* (Athens newspaper), 10 July 1994.

31. "Uncomformity of the Turkish Regulations for Traffic Order in the Area of the Strait and the Sea of Marmara to the Rules and Recommendations Adopted by the Maritime Safety Committee," IMO, LEG, 71/71, 5-8-1994.

32. IMO, LEG 71/13, p. 22-23; see also IMO, LEG 71/12/1.

33. IMO, MSC 65/WP.10/Add.1, pp.6-8.

at the protection of the environment and did not influence the rights of ships passing through the straits as these are foreseen by international law and that the Turkish Code of Regulations must conform to these recommendations. He also suggested that if questions arose concerning technical issues related to the passage through the straits, the competent body to which they had to be admitted was the NAV Sub-Committee of the IMO.³⁴ The 19th Plenary Session of the IMO in November 1995 adopted the Rules and Recommendations of the Maritime Safety Committee and confirmed that the Turkish Regulations must be in full compliance with them.

(b) The Legal Problems of the New Code of Regulations

Turkey claims that its new Code of Regulations had to be adopted due to the significant increase in maritime traffic through the straits and the percentages of ships carrying noxious, dangerous and hazardous cargoes. Since the Turkish straits constitute one of the most crowded waterways in the world, the Turkish government had to take into account the well-being of the 10 million inhabitants of Istanbul and the environmental integrity of the region.³⁵ Greece, together with other states, considers that the Turkish Regulations contravene international law and especially the Montreux Convention.

In fact, the problem of the new Turkish Regulations lies in the following issues:

- *The prohibition of the passage:* According to Article 29 of the Turkish code, the passage of vessels over 150 meters lies at the discretion of the Turkish authorities. Also, according to Article 30, ships which are nuclear powered or carry nuclear cargo or waste must obtain permission from the Turkish Ministry of Environment.

These points contravene Article 2 of the Montreux Convention which provides that "in time of peace, merchant vessels shall enjoy complete freedom of transit and navigation in the Straits." The IMO suggested in Annex Article 4.1 that vessels having a maximum draught of 15 meters or more and vessels over 200 meters "are advised to navigate in daylight."

- *Delays in the passage of vessels:* Article 24 of the Code of Regulations provides that maritime traffic may be temporarily halted by the Turkish

34. IMO, MSC 65/WP.10/Add.1, p.9.

35. Statement of the Turkish Foreign Ministry on the Safety of the Turkish Straits, *Anadolu*, 7 May 1996.

authorities due to construction work, drilling, fire extinguishing, scientific and sports activities, salvage and rescue operations, etc. Articles 42 and 52 provide that when a large vessel with hazardous cargo enters the Strait of Istanbul no other similar vessel following or approaching from the opposite direction may enter the strait until the exit of the previous vessel. Also, there are restrictions according to visibility, whereby the entrance or navigation of certain vessels shall be prohibited and maritime traffic will be open in the appropriate direction and closed in the opposite direction in accordance with Article 41. Finally, depending on their speed certain vessels have to wait for the current's speed to diminish according to Article 50.

Annex Article 1.1 of the IMO Recommendations recommends that vessels exercise full diligence and regard for the requirements of the Traffic Separation Scheme. There is no mention of any cases of delays of ships with the exception of vessels which cannot comply with the Traffic Separation Scheme. In such a case, Article 1.1 provides that the Turkish authorities may temporarily suspend two-way traffic and regulate one-way traffic to maintain a safe distance between vessels.

- *Rise of the cost of navigation through the straits due to pilotage and towing:* According to Article 31, the Turkish authorities may establish compulsory pilotage requirements in certain areas in the straits and Sea of Marmara for vessels other than transiting vessels. Also, vessels which anchor at docks without permission or which anchor in the Traffic Separation Scheme shall be removed by pilots and tug boats and the expenses will be paid by the vessels.

The Montreux Convention provides in Article 2 that "pilotage and towage remain optional." Annex Article 3.1 of the IMO Recommendations "strongly recommends" masters of vessels passing through the straits to avail themselves of the services of a pilot in connection with the requirements of safe navigation.

- Some other requirements of the Turkish Code of Regulations such as the definition of vessels in accordance with their size³⁶ or the addition of lights³⁷ were not accepted by the IMO.³⁸ Other points like the obligation to

36. "Large vessel means a vessel 150 m. or more in length" in Annex Art.2, j; "deep draught vessel means vessels with a maximum draught of 10 metres or more" in Annex Art.2, i.

37. Annex Art.16.

report to Traffic Control Center and Stations of Article 11 or the submission of two sailing plans before the entrance to the straits with various information concerning the vessel³⁹ were simply recommended by the IMO.⁴⁰

The task of solving the problem of navigation in the straits is very delicate. The problem of the environmental protection of the Turkish straits is undoubtedly very important and the Montreux Convention is falling short of meeting present day requirements. Nevertheless, the substitution of certain Articles of the Montreux Convention by the internal Turkish legislation cannot be an answer to this problem. Some Turkish scholars suggest that Turkey has to denunciate the Montreux Convention in accordance with Convention Article 28.⁴¹ Although there are objections in Turkey to this view,⁴² it is important to see its possible implications.

According to Article 28, in case of denunciation, the Montreux Convention is to remain in force "until two years after such notice shall have been given." In accordance with the last paragraph of Article 28, the signatory states are obliged to be represented in a new conference for the purpose of concluding a new convention. Under the present circumstances, however, it seems unrealistic to believe that the conference may have success. In such case, some Turkish experts suggest that Turkey has to offer freedom of passage in accordance "with the principles of equity" and the "concept of secure and innocent passage."⁴³

The justification for the Turkish views lies in the Preamble of the Montreux Convention which states that the desire of the signatory states was to safeguard three rights, namely, Turkish security, the security of the riparian states of the Black Sea and the freedom of transit and navigation. The Turkish experts are focusing their attention on the right of Turkish security. Since the Montreux Convention did not prescribe any rules concerning Turkish security, Turkey has the right to adopt these measures in the field of its internal legislation.⁴⁴

38. For a detailed analysis of the differences between the Turkish Code and the IMO Recommendations, see Nikolaou, 1995, pp.124-129.

39. Art.7 &8, Sailing Plans I, II.

40. Art.2 of the Rules and Recommendations.

41. Soysal, Ismail, *Bogazlardan Geçiş Güvenliği ve Montreux Sözleşmesi*, 1994, p.72

42. Toluner, *Bogazlardan Geçiş Güvenliği ve Montreux Sözleşmesi*, 1994, p.74.

43. Soysal, Ismail, *Bogazlardan Geçiş Güvenliği ve Montreux Sözleşmesi*, p.72.

44. Caga, T., *Bogazlardan Geçiş Güvenliği ve Montreux Sözleşmesi*, 1994, p.80.

Nevertheless, it has to be noted that the term "Turkish security" as it is referred to in the Preamble of the Convention cannot be related to environmental protection. During the period of the drafting of the Montreux Convention, the environmental parameter was almost unknown. More important during that period was security in the event of an external war or threats of aggression in general. Thus, the reference to "Turkish security" in the Preamble of the Montreux Convention means that the signatory states "eradicated entirely the relevant provisions of the Lausanne Convention relating to the demilitarization of the Straits."⁴⁵ This is further proved by the fact that most of the Articles of the Montreux Convention refer to the passage of warships.⁴⁶

It is also important to note that according to Article 28 of the Montreux Convention, "the principle of freedom of transit and navigation affirmed in Article 1 of the present Convention shall however continue without limit of time." Although there is a problem of interpretation whether the extent of these rights has to be interpreted in accordance with the terms and limitations of the Montreux Convention or with general international law,⁴⁷ the principle established in Article 28 cannot be ignored. Another factor that cannot be ignored is that at "all times the basic interests of Turkey and the Black Sea states played an exceptional role and defined the limits of the free transit."⁴⁸

Under these circumstances, the solution of the problem in a rational manner will become more simple within the IMO. The Rules and Recommendations which were adopted in 1994 offer a good framework for the "environmental protection and are not intended in any way to affect or prejudice the rights of any ship using the Straits under International Law" including the LOSC and the Montreux Convention.⁴⁹ Thus, a fair solution is that the Turkish national Regulations have to be amended in order to be "in total conformity" with the IMO Rules and Recommendations as prescribed in Article 2. Finally, it has to be noted that it is a contradiction for Turkey to allege that Greece intends to obstruct freedom of navigation in the Aegean while at the same time it adopts unilaterally a domestic legislation which imposes serious restrictions on the freedom of navigation contrary to the provisions of an international treaty.

45. Rozakis and Stagos, 1987, p.116.

46. Bredhimas, *The Aegean Sea and the New Law of the Sea*, 1996, p.143.

47. Rozakis and Stagos, 1987, p.106.

48. Ibid., p.106.

49. Art.2 of the Rules and Recommendations, IMO, SN/Circ.166/1 June 1994.

4. NO ACTIVATION OF THE NATO HEADQUARTERS

Another area of tension between the two countries in the years after 1992 was the establishment of NATO headquarters in Greece and Turkey. The whole issue can be considered as a classical example of the mistrust between the two countries. The problem dates back to the Greek withdrawal from NATO's military wing. After Greece's reintegration in 1980, the operational limits of NATO headquarters in Larissa remained undelimited. In December 1992, Greece and Turkey agreed to the establishment of land headquarters in Larissa.

A year after this decision, Turkey vetoed the establishment of the headquarters in Larissa. Greece followed this decision and the result was that all the NATO headquarters in the southeastern flank of NATO were blocked. Although Greek-Turkish disputes have often blocked Alliance activity in the eastern Mediterranean, Turkey chose to widen the dispute. In the early months of 1995, the operation of NATO was obstructed since Ankara blocked NATO's entire military budget and forced the freezing of all military projects. In May 1995, Greece stated that it did not recognize the Land Forces South Eastern Europe (LANSOUTHEAST) and the 6th Allied Tactical Air Force (ATAF) in Izmir.⁵⁰ At a time when NATO relevance in a post-Cold War world was increasingly questioned, the Greece-Turkey row could further dent NATO's credibility.

Nevertheless, as has been explained earlier in this study, the nature of a multinational defense organization such as NATO and the secrecy of the obligations of each country towards its allies does not leave much room for the examination of the possible issues raised from the point of view of international law.⁵¹ What is important in connection with Greek-Turkish problems is that Turkish National Defense Minister Golhan tried at a certain stage to connect the establishment of the headquarters with the Greek territorial sea. Thus, in April 1994 he stated that his country was prepared to accept the establishment of a multinational NATO rapid deployment force headquarters in Thessaloniki and the two land and air NATO headquarters in Larissa under three conditions. These were:

- Greece abandons its right to extend its territorial waters to twelve miles in the Aegean,

50. *To Vima* (Athens newspaper), 7 May 1995.

51. See *supra*, pp.20-21.

- the first rotating commander will be Turkish, and
- the headquarters of land and air forces in Larissa will be set up simultaneously.⁵²

Athens rejected the Turkish conditions and considered that the dispute was between NATO and Ankara and not between Ankara and Athens since the NATO headquarters in Larissa should have already been established in compliance with the December 1992 ministerial decision if Turkey had not retracted its original consent.⁵³

5. THE ENFORCEMENT OF THE LOSC AND THE GREEK TERRITORIAL SEA

On 16 November 1993, Guyana became the 60th state to ratify the Law of the Sea Convention. According to Article 308 of the LOSC, the Convention entered into force twelve months after the date of the deposit of ratification or accession.⁵⁴ The entry into force of the LOSC on 16 November 1994 became another source of friction between Greece and Turkey. On 1 September 1994, an announcement of the secretariat-general of the Turkish National Security Council stated that Greece was preparing to extend its territorial waters to twelve miles on 16 November 1994. The announcement repeated the Turkish position that any extension of the Greek territorial sea was to be considered as a cause for war but explained that, at that stage, the agenda of the September meeting of the National Security Council had not yet been determined and therefore it was still unknown whether this issue was to be discussed.⁵⁵ Two days later, the Greek government spokesman responded that defining the precise limits of territorial waters was an element of national sovereignty, the discretion of which was solely the Greek government's.⁵⁶

By the end of October, the situation had deteriorated rapidly. On 21 October 1994, Turkish National Defense Minister Golhan expressed the view that should Greece undertake to expand its territorial waters "it will regret

52. *Cumhuriyet* (Istanbul newspaper), 3 April 1994.

53. *ANA, Daily Bulletin*, 17 May 1995, statements of Greek Prime Minister Papan-dreou after his meeting with NATO Secretary General Willy Claes.

54. By the end of 1996, 110 instruments of ratification, accession or succession were deposited with the U.N. secretary general in relation with the LOSC.

55. *BBC-SWB*, 3 September 1994, p.B 7, [19].

56. *BBC-SWB*, 5 September 1994, p.B 10, [22].

it,"⁵⁷ while the Turkish foreign minister reminded Greece that the extension of territorial waters would be considered as *casus belli*.⁵⁸ On 25 October, it was announced that "Turkey will start sea manoeuvres in the Aegean on 14 November, two days before Greece's right to an extension of its territorial waters comes into effect."⁵⁹ The Turkish exercises were scheduled to be conducted simultaneously with the preplanned air-naval exercises "Nereid" which were to be conducted by Greek forces with the participation of allied ships from Italy, France, U.K., Spain and the U.S. It is also important to note that during this period the Greek side had not expressed any intention to extend the Greek territorial waters.

A few days later, the Greek government spokesman described Turkish remarks on territorial waters as unjustified and explained that, according to Greece, the coming into force of the LOSC changed nothing but simply confirmed a customary right. He also stated *expressis verbis* that the Greek intention was not to extend the Greek territorial waters on 16 November because "these things were not decided so quickly."⁶⁰ The same view was expressed by the Greek Foreign Ministry spokesman,⁶¹ while the U.S. ambassador in Athens was assured that the Greek government did not intend in the immediate future to extend its territorial waters.⁶²

Although it was more than evident that Greece did not have any intention to increase its territorial waters, Greek-Turkish relations escalated dangerously due to the concurrent conducting of the naval exercises of the two countries in the Aegean. While the Turkish defense minister was warning that Greece was going to be a "real loser" out of a Greek-Turkish confrontation because it could not defend "its islands that are very close to Turkey,"⁶³ the NATO allies of the two countries, especially the U.S., were very concerned that a mistake during the naval exercises might lead to a hot confrontation. In letters addressed to the presidents and prime ministers of the two countries, U.S. President Bill Clinton advised caution and stated that the solution of

57. BBC-SWB, 24 October 1994, p.B 17, [16].

58. BBC-SWB, 25 October 1994, p.B 4, [9].

59. BBC-SWB, 27 October 1994, p.B 9, [21].

60. BBC-SWB, 2 November 1994, p.B 3, [8]; see also 28 Oct. 94, p.B 7, [22].

61. BBC-SWB, 7 November 1994, p.B 8, [23].

62. *Kathimerini* (Athens newspaper), 4 November 1994.

63. BBC-SWB, 7 November 1994, p.B 5, [9].

problems through negotiations would serve the interests of both countries.⁶⁴ It was also decided that the U.S. cruiser *Cape St. George* was to be in the area during the days of the exercises.

On 14 November 1994, the foreign ministers of Greece and Turkey met in the sidelines of a ministerial conference of the Western European Union in the Netherlands. Both ministers agreed that there was no longer a dangerous situation in the Aegean.⁶⁵ On 20 November 1994, it is not an oxymoron to say that gale force winds of Force Nine on the Beaufort scale brought calm in the Aegean. The "Nereid" exercises were concluded in the southern Aegean while the Turkish navy which was participating in the "Seawolf" exercises kept close to the Turkish coasts due to the very bad weather conditions that prevailed in the northern Aegean.⁶⁶

(a) Confidence Building Measures

The fragile stability between Greece and Turkey was realized by both countries which, at least in theory, claimed that there was a need to put an end to provocations in the Aegean. This resulted in proposals for the adoption of Confidence Building Measures (CBMs) in the Aegean. In 1994, the proposal came from the Turkish government. In 1995, the U.S. made a more advanced and elaborate approach which met a Greek counterproposal.

During the summer of 1994, Turkey made a goodwill gesture by disarming its jets flying over the Aegean Sea. As the Turkish president stated, "Turkey is a powerful country, but it should not be forced to demonstrate its power at every opportunity."⁶⁷ Greece proved reluctant to reciprocate. This reluctance was based first on NATO regulations. As the Greek defense minister stated, according to NATO regulations Greek fighter aircraft must be armed if they intercept unidentified aircraft that violate the rules of air traffic in the Athens FIR or the Greek national airspace.⁶⁸ Second, but more important, Greece did not consider as a goodwill gesture that Turkey was violating Greek national airspace with aircraft that do not carry missiles.⁶⁹ The problem in the Aegean existed because Turkish aircraft violated and infringed upon

64. *BBC-SWB*, 15 November 1994, p.B 4, [12].

65. *BBC-SWB*, 16 November 1994, Papouliás in p.B 4, [11], Soysal in p.B 5, [15].

66. *BBC-SWB*, 22 November 1994, p.B 3, [8].

67. *BBC-SWB*, 15 June 1994, p.B 7, [21].

68. *BBC-SWB*, 17 June 1994, p.B 6, [10].

69. Greek Foreign Ministry spokesman in *BBC-SWB*, 18 June 1994, p.B 3, [8].

Greek national airspace as well and did not comply with the rules of the ICAO in the Athens FIR; it did not exist because these aircraft were armed.⁷⁰

The American initiative tried to form a code of behavior between the two countries which involved accepting the existence of certain "disputed areas" between Greece and Turkey. This took the form of a "package" containing proposals to both Athens and Ankara which required mutual concessions to be acceptable. It has been suggested that some of these points were based on a similar agreement signed between the USSR and the U.S. on reciprocal advance notification of major strategic exercises.⁷¹ Although the exact content of these proposals was never made publicly known, there is strong evidence⁷² that the American proposal was based on the following points:

- Both sides to avoid conducting provocative acts in the national airspace or the territorial waters of the other country.

- Both sides to exchange advance notification no less than fourteen days in advance of their exercises on the basis of reciprocity as well as of the areas they want to block for these exercises.

- Both sides to avoid approaching the areas where military exercises are conducted in a distance less than ten nautical miles.⁷³

- Both sides to refrain from provocative conduct in certain designated areas of the Aegean.

- Both sides while being in the Athens or Istanbul FIR but very close to the frontiers to submit flight plans to the FIR of the neighboring country.

- Both sides to inform each other when a considerable number of units of their land and air forces or their navy is going to be transferred into the Aegean.⁷⁴

70. Greek Foreign Minister in *BBC-SWB*, 13 June 1994, p.B 4, [9].

71. Agreement between the U.S. and the USSR on reciprocal advance notification of major strategic exercises, Jackson Hole-Wyoming, 1989, *ILM*, Vol. 28, p.1436.

72. See *To Vima* (Athens newspaper), 9, 16 and 23 April 1995; *Kathimerini* (Athens newspaper), 11 May 1995; *Economikos Tachydromos* (Greek magazine), 11 May 1995, p.3; *Ta Nea* (Athens newspaper), 9 February 1996; the content of these articles was confirmed in informal discussions with Greek officers of the army who did not want to be named.

73. The first three points were included in President Clinton's letter addressed to the prime ministers of Greece and Turkey.

- Both sides to limit the number of their flights over the Aegean to twenty per day.

- Both sides to avoid engaging in a so-called "electronic war" interfering with the radar and telecommunications system of the other party.

The Turkish reaction to the proposals was more favorable than the Greek reaction. Greece disagreed with several points. It considered that the creation of the designated areas in the Aegean was synonymous with the adoption of the existence of disputed areas of limited sovereignty or control. The designated areas tended to disregard the responsibilities of the Greek authorities in the Aegean, which were assigned to them by virtue of international agreements.

Moreover, the obligation to submit flight plans to the FIRs of both countries for overflights over the border area was considered as an indirect adoption of the Turkish decision of 1982 which tried to establish "buffer zones" in the international airspace within the limits of the Athens FIR.⁷⁵ Although the American proposal contained obligations for both countries to submit flight plans in the Greek and Turkish FIRs, Greece remarked that it had never contested the validity or the limits of the Istanbul FIR, whereas Turkey had continuously contested the limits of the Athens FIR since 1974.

For these reasons, the Greek defense minister announced on 13 June 1995 to the U.S. ambassador in Athens that Greece could not accept the American proposals.⁷⁶ Nevertheless, Greece, realizing the need to adopt some measures for the elimination of the tension in the Aegean, proposed the adoption of two documents which had been signed between Greece and Turkey a few years before and concerned CBMs.

The first document was the "Memorandum of Understanding on Confidence-Building Measures" which was signed in Athens on 27 May 1988 between the foreign ministers Karolos Papoulias and Mesut Yilmaz. According to its terms, both parties had agreed "to recognize the obligation to respect the sovereignty and territorial integrity of each other and their rights to use the

74. The last three points were considered as an elaboration of the points contained in the U.S. Presidential letter. See *Economikos Tachydromos* (Greek magazine), 11 May 1995, p.3.

75. See *supra*, pp.18-20.

76. *To Vima* (Athens newspaper), 18 June 1995.

high seas and international airspace of the Aegean." In order to eliminate unwarranted sources of tension and reduce the risks of collision, they had decided to avoid interfering with "smooth [*sic*] shipping" and airtraffic when conducting national military activities in the high seas and international airspace. They had also decided to avoid, during national military exercises in the high seas and international airspace, the isolation of certain areas, the blocking of exercise areas for long periods of time and the conducting of these exercises during the peak tourist period.⁷⁷

The second document was the "Guidelines for the Prevention of Accidents and Incidents on the High Seas and International Airspace" which asked the two countries to conduct military and other activities in accordance with international law and international custom, to refrain from acts of harassment while operating in the high seas, to maintain a position which would not hamper the conduct of the other ships while observing firing operations or military activities and not to maneuver or react in a manner that would be hazardous to the safety or flight of other aircraft.⁷⁸

Although the two documents had been signed by both countries in 1988, Turkey did not accept their adoption. Thus, the issue of the application of CBMs in the Aegean was postponed.

(b) The EU-Turkey Customs Union

Another thorny area of the two Aegean countries was Turkish-EU relations. Greece, being one of the EU member states, often halted Turkey's advance to Europe on grounds of violations of international law and basic human rights. In the years 1994-95, the most problematic issue was the customs union between the EU and Turkey. Greece had vetoed the customs union.⁷⁹ Nevertheless, in February 1995 Greece decided to lift its veto and sign a provisional deal agreed by senior European Union officials on a landmark customs union between the fifteen EU members and Turkey.

This change was due to the Greek satisfaction for the partial acceptance of four conditions, including an EU commitment for a specific date for the beginning of Cyprus membership talks and more funds for the Greek textile industry, likely to be threatened by Turkish exports. The Council of Permanent Representatives (COREPER) finalized the details of a compromise⁸⁰ and

77. See *supra*, pp.260-262.

78. See *supra*, pp.264-265.

79. *BBC-SWB*, 19 December 1994, p.B 3, [5,6].

80. *BBC-SWB*, 27 February 1994, p.B 4, [11].

it was agreed that Cyprus accession talks were to start six months after the intergovernmental conference to revise the Maastricht Treaty. Cyprus's participation in dialogue with the EU was also brought to the same level as that between the EU and central and eastern European states. On the Greek demands for compensation for its textile industry, likely to be threatened by Turkish competition, the European Commission decided to conduct a survey to see what aid might be necessary once the customs union goes into effect. The final text was considered as containing positive elements for Greece, namely that Turkey must strive for relations of good neighborliness with the EU members it shares borders with, that it must apply the rules of international law in the case of disputes and avoid acts of violence, that it must make every effort for a solution of the Cyprus problem on the basis of U.N. Security Council resolutions.

Finally, during the 36th EU-Turkey Association Council session, the European Union and Turkey formally signed a customs union agreement which was expected to give Turkey up to 2.5 billion ECUs in loans and assistance from the EU over five years and probably another 300-400 million ECUs under a special EU program to fund infrastructure projects around the Mediterranean. The customs union was also expected to open trade in a wide range of goods and services and boost Turkish exports, mainly textiles, and enable Turkish textile producers to enter into the EU market without any tariffs and quotas. Turkish officials believed that textile exports were to be doubled up to \$10 billion the year following the establishment of the customs union.⁸¹ The political dimension of this decision was also important since Turkey was coming one step closer to full membership in the EU. Nevertheless, some hours after the signing of the customs union agreement, Turkish Foreign Minister Murat Karayalcin stated that Turkey would annex the occupied north of Cyprus if Cyprus talks on becoming a full member of the EU began before the Cyprus issue was resolved.⁸²

The application of the deal also depended on approval by the European Parliament. Greece's objections were not the only ones before the customs deal was in the final stretch. The European Parliament casted doubt by saying that Turkey's human rights record was not good enough for the agreement to be allowed to go through. Finally, the decision of 6 March 1995 by the EU-

81. Information received from the ANA office in Brussels, 7 March 1995.

82. ANA, *Daily Bulletin*, 6 March 1995.

Turkey Association Council moved to the final phase of the customs union after receiving parliamentary assent on 13 December 1995, enabling it to come into force on 31 December 1995.

(c) The Ratification of the LOSC by Greece

On 31 May 1995, the Greek parliament voted unanimously for the ratification of the LOSC.⁸³ The Convention was raced through parliament mainly due to the pressure of the main opposition party which had been asking since November for the immediate ratification of the Treaty.⁸⁴ Article 2 of Law 2321/1995 declared that Greece reserved its right to expand its territorial sea at any time. The reason that Greece had not ratified the LOSC earlier seems to have been the participation of the country in the EEC/EU. According to one commentator, Greece had accepted the view that the member states of the EU "could not deposit their ratification or accession instrument individually, but that at least a majority should do so simultaneously with the EC at the appropriate moment."⁸⁵ The adoption of the Agreement on the Implementation of Part XI of the LOSC in 1994 convinced the other member states of the EU to ratify the Convention, while the president of the EU Council in a letter addressed to the U.N. secretary general confirmed the provisional application of the Convention as of 16 November 1994.⁸⁶

On 21 July 1995, Greece ratified the Convention. Upon ratification, the Greek government made a declaration in which it was stated *inter alia* that Greece

- secured and assumed all the rights and obligations deriving from the Convention and declared that Greece's determination "when and how it shall exercise these rights, according to its national strategy" did "not imply that Greece renounces these rights in any way,"

83. *ΕτΚ*, Law 2321/23 June 1995, A' 136.

84. See *BBC-SWB*, 16 November 1994, p.B/5 [13]; see also Ioannou, *The Aegean Sea and the New Law of the Sea*, 1996, p.15 ff.

85. Strati, *LJIL*, 1996, pp.100-101.

86. Garzon Clariana, *RBelDI*, 1995, p.42.

- reiterated the interpretative declaration on straits, in areas where there are numerous spread-out islands that form a great number of alternative straits which serve, in fact, one and the same route of international navigation, which it deposited at the time of the Convention's adoption and at the time of its signature,

- chose the International Tribunal for the Law of the Sea, established in accordance with Annex VI of the Convention, as the means for the settlement of disputes concerning the interpretation or application of the Convention in accordance with Article 287 of the LOSC, and

- mentioned that a member state of the EU had given the latter jurisdiction with respect to certain issues relating to the LOSC. Following the deposit by the EU of its instrument of formal confirmation, Greece declared that it would make a special declaration specifying in detail the issues dealt with in the Convention for which it had transferred jurisdiction to the EU.⁸⁷

There is not much to say about the Greek declaration in relation to the Greek-Turkish dispute. The expressed determination for the exercise of the rights and obligations deriving from the Convention according to Greek national strategy and the reminder that this did not imply that Greece renounced these rights in any way was directly connected with the extension of the Greek territorial sea. Nevertheless, it was done solely for reasons of domestic comfort since it did not add anything regarding the international legal rights of Greece to extend its territorial sea to twelve miles.⁸⁸ The Greek insistence on repeating its interpretative declaration concerning the regime of straits shows the significance that the regime of international straits can play in a sea such as the Aegean in case of an extension of Greek territorial waters.⁸⁹ Finally, it has to be added that according to Article 308 of the LOSC, the Convention entered into force for Greece one month after the deposit of the instrument of ratification on 21 August 1995.

On 21 December 1995, the U.N. secretary general received from the Turkish government a communication which stated *inter alia* that:

87. *Law of the Sea Bulletin*, No. 29, 1995, p.6.

88. Ioannou, *The Aegean Sea and the New Law of the Sea*, 1996, p.23.

89. See *infra*, pp. 452-455.

1. The signature and ratification of the Convention by Greece and the subsequent declaration in this regard shall neither prejudice nor affect the existing rights and legitimate interests of Turkey with respect to maritime jurisdiction areas in the Aegean. Turkey fully reserves her rights under international law. Turkey wishes to state that she will not acquiesce in any claim or attempt designed to upset the long-standing status quo in this respect, that would deprive Turkey of her existing rights and interests. Any unilateral act in this respect that would constitute an abuse of the provisions of the Convention would entail totally unacceptable consequences. Turkey has registered her opposition in this regard actively and persistently from the very outset...

3. Turkey reserves its right to make further declarations as may be required under the circumstances in the future."⁹⁰

Turkey also repeated the written statement it had made in 1982 in relation to the Greek interpretative declaration on the straits.⁹¹ This Turkish communication raises several questions. From the last paragraph of the communication, it is evident that Turkey considered it as a "declaration." Its substance shows that it is an "objection" to the Greek declaration made upon the ratification of the LOSC.⁹² The first question raised is under which capacity Turkey made this declaration since it is not a signatory state, but, on the contrary, it was one of the four states which voted against its adoption.⁹³ Therefore, the Convention is for Turkey a *res inter alios acta* and the same applies for the Greek declaration. The second question which is directly related to the above-mentioned points and the fact that Turkey is not a participant state in the Convention is "what is the legal effect, if any, of this 'objection'?"⁹⁴

A third question has to do with the substance of the declaration. According to Turkey, "any unilateral act...that would constitute an abuse of the provisions of the Convention would entail totally unacceptable consequences." Thus, Turkey seems to accept the provisions of the LOSC since it claims

90. *Law of the Sea Bulletin*, No.30. 1996.

91. UNCLOS III, *Off.Rec.*, Vol.XVII, part B., Doc.A/Conf.62/WS/34, p.226 *supra*, pp.200-201 and fn.154.

92. Strati, *LJIL*, 1996, p.103.

93. See *supra*, p.196.

94. Strati, *LJIL*, 1996, p.104.

that it will react only in unilateral acts which will abuse the Convention. At this point, it has to be recalled that the extension of the Greek territorial sea to twelve miles is in total conformity with Article 3 of the LOSC. Moreover, the extension of territorial waters takes exclusively the form of a unilateral act since there are no references in the LOSC that other states have to express their consent for the extension. Therefore, Turkey appears to accept the extension of the Greek territorial sea. The obvious interpretation of this sentence of the declaration is diametrically different from the previous sentence where Turkey claimed that it would not accept the upset of the longstanding status quo in the Aegean. The question still remains: What did Turkey really mean with this declaration?⁹⁵

6. THREATS OF WAR "IN A SPIRIT OF FRIENDSHIP"

(a) The Turkish Decision and the Reactions

On 9 June 1995, some days after the ratification of the LOSC by the Greek parliament, the Turkish Grand National Assembly approved rather unexpectedly a resolution which empowered the Turkish government to take all measures including military ones if Greece extended its territorial waters beyond the six miles. As it was stated:

Greece has lately made known its desire to extend its territorial sea to 12 miles, making use of certain provisions of the LOS Convention that have essentially been designed for open seas and ocean areas...while hoping that the Greek government shall not decide to extend its territorial sea in the Aegean beyond the present 6 miles limits, which in turn would ruin the equilibrium established by the Lausanne Treaty, the Turkish Grand National Assembly has decided to grant the Turkish government all powers, *including those that may be deemed necessary in the military field*, for safeguarding and defending the vital interests of Turkey in such an eventuality. The Grand National Assembly of Turkey

95. A possible explanation is that Turkey "seems to oscillate between customary and conventional law," in Strati, *LJIL*, 1996, p. 104.

has also decided to announce this to the Greek and world public opinion in a spirit of friendship.⁹⁶

The resolution which was presented by the main opposition Motherland Party was signed by the representatives of all Turkish political parties. In Greece, the Turkish resolution was described as threatening peace and stability in the greater region since "the enforcement and implementation of international conventions has become a pretext for the reiteration of brutal and historically constant threats against Greece."⁹⁷

At the same time, a string of official complaints was lodged with international organizations such as the U.N., NATO, the EU and the OSCE, while the president of the Greek parliament was sending protest letters to all the EU parliaments and the Council of Europe.⁹⁸ According to a letter addressed to the U.N. secretary general by Greece's permanent representative at the U.N., the Turkish resolution was described as constituting "a direct violation of Article 2, par. 4 of the Charter of the U.N." which stipulates that all the U.N. members refrain from the threat or use of force, and as confirming Turkish claims against the Greek islands. The letter also recalled the recent Turkish legislation concerning passage in the straits and mentioned that

The Greek government attaches a particular importance to the Turkish threat, all the more so since the latter emanates from a neighboring and allied country and *is not, obviously, intended to prevent the commitment of an illegal act but, on the contrary, to prevent the implementation of rules and rights deriving from international law.*⁹⁹

The threat of a war was also used by Greek officials as an indication of Ankara's difficulty in acting as a country that respects international legal or-

96. Emphasis added; the text furnished by the Turkish Embassy in Athens. See map

11.

97. Government Spokesman Evangelos Venizelos, *Kathimerini* (Athens newspaper), 9 June 1995.

98. *Kathimerini* (Athens newspaper), 10 June 1995.

99. U.N. Doc. S/1995/476, 12 June 1995, emphasis added.

der¹⁰⁰ "which greatly increased the distance separating it from Europe and its institutions."¹⁰¹

(b) The Evaluation of the Legitimacy of the Turkish Resolution

In substance, the Turkish resolution falls undoubtedly under the provisions of Article 2.4 of the U.N. Charter.

All members [of the U.N.] shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the Purposes of the United Nations.

The "comprehensiveness of these provisions can hardly be surpassed."¹⁰² Article 2.4 outlaws not only recourse to war but any use or threat of force that is against the territorial integrity or political independence of another state.¹⁰³ The expression "including those [powers] that may be deemed necessary in the military field" which was embodied in the Turkish resolution can only be understood as purely military or armed force, which falls totally under the meaning of Article 2.4 of the U.N. Charter. What is equally important is that the threat of use of force was not made for promoting justice but, on the contrary, for stopping one state from exercising its legitimate rights. The threat of a war was an answer to the exercise of a right which is in total conformity with international law. That was the reason Turkey invoked the use of force since it did not have any lawful means to stop the exercise of a legitimate right.

The Turkish resolution distorted reality since it was alleged that Greece wants to extend its territorial sea to twelve miles "making use of certain provisions of the LOS Convention that have essentially been designed for open

100. Foreign Ministry Spokesman Bikas, *ANA, Daily Bulletin*, 16 June 1995.

101. Government Spokesman Evangelos Venizelos, *ANA, Daily Bulletin*, 17 June 1995.

102. Oppenheim, Vol.II, 7th Edition, 1955, p.153.

103. See Oppenheim, Vol.II, 7th Edition, 1955, p.153; Clark Arend and Beck, 1993, p.31; Detter De Lupis, 1987, pp.56-57.

seas and ocean areas."¹⁰⁴ First, the right to extend a territorial sea up to twelve miles is not based solely on the LOSC. It is a customary international rule as shown by the universal adoption of the twelve mile limit by more than 120 states all over the world.¹⁰⁵ Second, the legislative history of the LOSC provisions shows beyond any doubt that the provisions related to the length of the territorial sea were never designed for open seas and ocean areas. There were no similar provisions even for the continental shelf or the EEZ in the LOSC, which extend far beyond the outer limits of the territorial sea. There are no geographical or other limits for the application of the relatively limited length of the twelve miles for the territorial sea.

In concluding, in the evaluation of the legitimacy of the Turkish resolution it is very difficult not to examine international practice concerning this field. Thus, as has been rightly observed:

No Baltic State has ever thought to create an international dispute out of the fact that shipping has to pass through Danish, Swedish or German waters before reaching out to the North Sea. Gulf shipping is equally obliged to visit Iranian or Omani territorial waters within the Hormuz strait, yet no Gulf state ever contested on this ground the sovereign right of either Iran or Oman to increase their territorial sea to twelve miles and close the high seas corridor which would otherwise have existed through the strait.¹⁰⁶

104. See on this point Politakis, *IJourMCL*, 1995, pp.526-527. Politakis also comments on the Turkish statement that "Turkey's access to high seas and oceans of the world is only by passing through Greek territorial sea."

105. See *Law of the Sea Bulletin*, June 1996.

106. Politakis, *IJourMCL*, 1995, p.526.

B. THE IMIA INCIDENT AND THE GRAY AREAS OF THE AEGEAN

1. AEGEAN WARRIORS OR "TERRAE POTESTAS FINITUR UBI FINITUR ARMORUM VIS"

The Imia/Kardak incident was not only "a troubling reminder of the mistrust between two national allies."¹⁰⁷ What appeared in the beginning as the product of media hysteria resulted in the most serious incident since the March 1987 crisis and probably since the Turkish invasion of Cyprus in 1974. Before examining the incident in detail, it should be noted that the Imia/Kardak confrontation was particularly dangerous as both countries were at that time in a state of political transition. A new government had just been formed in Greece under the leadership of Constantine Simitis following the hospitalization, resignation and subsequent death of Andreas Papandreou. In Turkey, Tansu Ciller led the caretaker administration.

The source of the dispute was two uninhabited islets, known as Imia or Limnia to the Greeks¹⁰⁸ and as Kardak to the Turks,¹⁰⁹ which belong to the Dodecanese islands group and lie at a distance of 1.9 miles from the Greek island of Kalolimnos, 5.3 miles from the Greek island of Kalymnos, 3.8 miles from the Turkish mainland coast and 2.3 miles from the Turkish island of Cavus. The islets were uninhabited. Greek fishermen leased Imia/Kardak from the Municipality of Kalymnos on a yearly basis, visiting the islets occasionally to feed a few goats. Turkey, on the other hand, claims that Turkish boats were fishing the seas all around the islets.¹¹⁰

107. *Financial Times*, 1 February 1996.

108. See Greek Law 547/1948, ErK 39/14 February 1948, A. It seems that the name Imia is the corruption of the name Limnia. During the Italian occupation, the first letter of the name Limnia was probably considered by the Italians as the Italian article L', and the name became L' Imnia.

109. This study uses both names, Imia/Kardak. The name Kardak is also used in the December 1932 Agreement between Italy and Turkey. The Turkish Foreign Ministry announced a few days after the incident that the local name for Kardak was "Ikizce"; nevertheless, this name has never been used thereafter; "What's in a name?," *TDN*, 8 February 1996. See map 12.

110. Turkish press release dated 30 January 1996 on the position of the Turkish government regarding the Kardak rocks.

On 25 December 1995, a Turkish bulk carrier, *Figen Akat*, ran aground on one of the two islets. During the salvage operations carried out by the Greek authorities, the Turkish captain initially refused any assistance on the ground that the territory was Turkish and so sought help from Turkey. What happened afterwards is unclear. The only point that the two countries agree upon is that salvage was conducted by a Greek boat. According to Greece, after an agreement with the Turkish company which owned the ship, a Greek tugboat set free the Turkish bulk carrier and towed her to the Turkish port of Gulluk.¹¹¹ According to Turkey, the vessel was freed by a Turkish salvage company "which contracted the services of a Greek salvage boat."¹¹²

The whole incident would have passed unnoticed if on 29 December 1995 the Turkish Foreign Ministry had not addressed a *note verbale* to the Greek Embassy in Ankara wherein it was asserted that "the islets of Imia constitute part of the Turkish territory and that they had been recently registered in the Registry of Deeds of the Turkish province of Mulga."¹¹³ The Greek Embassy rejected the Turkish claim by addressing a *note verbale* to the Turkish government asserting what has remained ever since the hard core of the Greek arguments: by virtue of a bilateral agreement signed between Turkey and Italy in 1932 delimiting a part of the territorial boundaries and sovereignty over islets dependent on the Dodecanese islands group, the sovereignty over the Imia/Kardak islets was accepted as belonging to Italy. The islets were subsequently ceded with the rest of the Dodecanese islands by the Treaty of Paris of 1947.¹¹⁴

On 20 January 1996, the whole incident was leaked to the Greek magazine *Gramma*. A few days later, a freelance "war of the flags" started. A Greek television station showed the Greek mayor of the nearby island of Kalymnos raising a Greek flag in the rocky outcrop of the larger of the Imia/Kardak islets. On 27 January 1996, *Hurriyet*, one of Turkey's best selling newspapers, sent a group of reporters from its new television station to replace the Greek flag with a Turkish one in front of the television cameras. The next day, the Greek navy landed uniformed men with rifles on one of the

111. Letter of the Greek Ambassador to NATO, 5 February 1996.

112. Letter of the Turkish Ambassador to NATO, 728/9 February 1996.

113. This information has been published on the World Wide Web site of the Greek Foreign Ministry (<http://www.mfa.gr/>).

114. Ibid.

two islets and replaced the Greek flag, while a Turkish torpedo boat approached a Greek naval unit.

For the next three days, Greek and Turkish frigates, coast guard cutters and warplanes circled the two islets, while both countries were claiming that one was violating the territorial sea and national airspace of the other. On 29 January, Turkey addressed a second *note verbale* to Greece asserting that the December 1932 Agreement mentioned by Greece in its first *note verbale* was invalid. It further claimed that the many islets and rocks share the same status as Kardak and asked Greece to proceed to the negotiating table in order to determine by new agreements the sovereignty over them.¹¹⁵

The next day, Greece put its armed forces on full alert while similar moves on the Turkish side were indirectly confirmed.¹¹⁶ Simultaneously, Ankara announced that a legal and technical study had started regarding the status of the rocks and uninhabited islands in the Aegean. While more naval frigates were sent to the disputed area, a war of words grew hotter between the two countries. The Turkish prime minister vowed that she would not put up with a foreign flag on "Turkey's soil."¹¹⁷ The Greek prime minister said to the deputies of the Greek parliament that "in any case the Greek flag would continue to fly on Imia."¹¹⁸

While the secretary general of the U.N. expressed his concern about the sudden outbreak of tension between Greece and Turkey,¹¹⁹ the Imia/Kardak confrontation reached a critical stage. Early on the morning of 31 January, Greek warships failed to prevent a detachment of Turkish commandos from landing on the adjacent islet, within shooting range of the Greek troops on the larger islet. A Greek helicopter that went to verify the reported landing over the lesser islet crashed into the sea (possibly due to a mechanical failure) as it tried to return to its frigate, and its three-man crew was killed.

Some hours before this incident, pressure to disengage was put on both sides by U.S. President Bill Clinton, U.S. Secretary of State Warren Christopher and NATO Secretary General Javier Solana. Finally, the crisis de-escalated and the whole incident was brought to a peaceful end in the early

115. The text of the second Turkish *note verbale* was published in *Kathimerini* (Athens newspaper), 11 February 1996. See also Kourkoulas, 1997, pp.156-159.

116. *The Turkish Times*, 1 February 1996.

117. *TDN*, 30 January 1996.

118. *The Times* (London newspaper), 31 January 1996.

119. Press Release, SG/SM/5887, 30 January 1996.

hours of 31 January by the telephone diplomacy of American negotiator Richard Holbrooke. Both sides agreed to remove their flags, pull back their warships, stop warplane sorties and withdraw troops. This situation was described as a return to the "*status quo ante*" of Imia/Kardak since, in the past, no national symbols were raised on the territory of the islets.

The psychological impact of the withdrawal on both sides was great. Turkey's government declared victory after Greece removed its troops and flag from one of the two islets. Prime Minister Ciller presented the commando action as the event that forced Greece to reconsider its position. The Turkish Interstar television channel covered the return of the Turkish commandos with Ottoman military music playing in the background and a subtitle stating "Victory Returns."

On the other side of the Aegean, newly appointed Greek Prime Minister Simitis faced a barrage of domestic criticism for having backed down from his pledge that the Greek flag would remain in place. The withdrawal of the Greek troops was considered as an implicit acknowledgment that Greece lacked the military might to fight Turkey over Aegean Sea quarrels. The conservative opposition walked out of parliament protesting against what it referred to as "betrayal" and "national humiliation." Things became even worse for the new prime minister when it was revealed that the Turkish troops landed on Imia/Kardak *after* the end of the U.S. mediation and the agreement between Greece and Turkey.

2. "GRAY ZONES"—*TERRA NULLIUS* AND INSTABILITY IN THE AEGEAN

(a) *The Existence of "Gray Areas" of Sovereignty*

The military crisis between Greece and Turkey over the Imia/Kardak islets dissolved and gave way to contests of sovereignty on the ownership of numerous islets and rocks in the Aegean. While Turkey's ambassador to Athens, Umit Pamir, went back to Turkey for consultations regarding what Ankara called "Greece's hostile moves to prevent Turkish interests,"¹²⁰ Turkish Foreign Ministry Spokesman Omer Akbel was saying that "the issue was not merely the ownership of Kardak rocks...there are hundreds of little islands, islets and rocks in the Aegean and their status remains unclear." This

120. *TDN*, 28 February 1996.

was "due to the absence of a comprehensive bilateral agreement between the two countries."¹²¹ According to Akbel, Turkey had started a legal study on the status of these insular formations.

Also, Turkish Foreign Minister Deniz Baykal noted that behind the Imia issue lay the entire question of the Aegean islets' status.¹²² The existence of *terra nullius* (territory belonging to no state) in the Aegean was also connected with the fact that in 1995 Greece was promoting a plan for settlers to move to Greek islands deserted in recent years. This decision was considered as an action for the ascertainment of Greek sovereignty over disputed islets and rocks.¹²³

Meanwhile, in the political field Prime Minister Ciller was trying to offer formulas for a government coalition under her premiership while she continued to make domestic political capital out of the Imia/Kardak crisis. On 3 February 1996, speaking at a gathering of Turkish journalists in Istanbul, Ciller said that since 1947 Turkey had said nothing regarding the rocky islets, nor had Ankara claimed them as Turkish territory. She noted, however, that Turkey would now bring the status of the approximately 1,000 rocky isles and islets, such as Imia, to the attention of international bodies. "There are approximately 1,000 islands, islets and rocky isles such as Kardak or larger; we shall bring up their status to the international legal arena and the fact that they are Turkish territory," she said. She added that she had commissioned a study on the issue and an international drive to inform world opinion of Ankara's position.¹²⁴

This situation continued for months. By the end of May 1996, low-level contacts between Greek and Turkish diplomats in Geneva reconfirmed Ankara's view of the existence of "gray areas" of sovereignty in the Aegean. The Turkish diplomats, however, refused to name these areas.¹²⁵ Finally, in the middle of June 1996, the Turkish daily *Milliyet* presented the Turkish position concerning areas in the Aegean over which Ankara disputes Greek sovereignty. According to an article in the daily, besides the sovereignty of the larger inhabited Aegean islands, where Greek sovereignty is based on bilateral and international agreements, there exist other islands, islets and rocks

121. *TDN*, 1 February 1996.

122. *ANA, Daily Bulletin*, 5 February 1996.

123. Second Turkish *note verbale*, 29 January 1996.

124. *ANA, Istanbul*, (Kourkoulas) 5 February 1996.

125. *Kathimerini* (Athens newspaper), 29 May 1996.

that "Greece considers its territory" without being supported by any agreement. *Milliyet* stated that the islets are a type of "no man's land" but that Ankara had decided for the moment not to bring the matter up for discussion before recourse was made for some type of "arbitration." It is interesting to note that among these islets the island of Agathonisi, with a population of 112 people, was also included.¹²⁶

Two months later, the Turkish daily *Cumhuriyet* revealed the existence of a Turkish military report which stated that

the Aegean islands not referred to in any treaty, and which were not taken by Greece during the Balkan Wars, as well as the islands, islets and rocks lying less than six miles from the Turkish coast legally belong to Turkey, the state which succeeded the Ottoman Empire.... Turkey retains its sovereignty over these islands, apart from those given to Greece under Article 12 of the Treaty of Lausanne.¹²⁷

Although the Greek government asked the Turkish *chargé d'affaires* in Athens for explanations regarding his government's stance on this report, no reply was ever given.

(b) *Where is Gavdos Island?*

The impression that the situation in the Aegean Sea had deteriorated in contravention of all rules of law and logic was given in late May 1996 due to Gavdos island. Gavdos is not an Aegean island. It lies twenty miles south of Crete in the Libyan Sea. In terms of size, it is neither a rock or an islet. Its surface is 30 sq. km. And, according to the last Greek census, it was inhabited in 1991 by 115 people. On 30 May 1996, during the planning of the NATO exercise "Dynamic Mix 1996" in Naples, which was to take place in Crete, the representative of the Turkish General Staff submitted a statement according to which Turkey opposed the inclusion of Gavdos in the exercise "due to its disputed status of property."¹²⁸ During the days that followed, the opposition to the inclusion of islands was extended to cover all islands surrounding

126. *Milliyet* (Istanbul newspaper), 13 June 1996.

127. *Cumhuriyet* (Istanbul newspaper), 7 August 1996. The text of the report under the name *Ege Ada, Adacik ve Kayaliklarinin Gografî-Tarihi-Hukuki Durumu ve Uygulanan Politikalar* [The Islands, Islets and Rocks of the Aegean, Geographic-Historic-Legal Review and Political Proposals] was published in Kourkoulas, 1997, pp.155-188.

128. *Kathimerini* (Athens newspaper), 6 June 1996.

Crete. The Turkish representative suggested that NATO officials should refrain from becoming involved in what he termed a "dispute." This allegation was also endorsed by Turkish Prime Minister Mesut Yilmaz himself who was paying an official visit to Brussels.

On 5 June 1996, Turkish Foreign Ministry Spokesman Omer Akbel tried to clarify the matter. He expressed the view that the trouble arose when Greece attempted a "*fait accompli*" and tried to have Gavdos included in the NATO exercise. The Turkish side had opposed this on the grounds that "an investigation on the legal status of this island was needed" and that the Turkish "representative at the NATO meeting did not make a political but a technical announcement." He also explained that "it should be investigated whether Gavdos island is also among the islets whose status needs to be determined" but relieved the Greeks by saying that the issue of Gavdos had "not reached the stage of being disputed territory yet." Of course he added that "after the investigation, if necessary, the status of the island might be the subject of dispute."¹²⁹

The only comment that can be made is that the dispute of the Greek sovereignty over Gavdos is an exaggeration which cannot be logically explained. As has been previously mentioned, Gavdos is not an Aegean island. The contest over its status is not connected with any of the international treaties that Turkey claims are violated by Greece. The legal status of Gavdos was set ten years before the conclusion of the Lausanne Treaty, in 1913. Under Article 4 of the London Peace Treaty of 1913, Turkey renounced all sovereign rights over Crete and Gavdos in this respect. Moreover, Gavdos does not lie in the Aegean and it is neither an islet nor a rock which are considered by Turkey as constituting *par excellence* gray areas of sovereignty.

A few days after the incident, Turkish Foreign Minister Gonensay implied that Turkey did not want to claim that Gavdos island belonged to her. In a written statement, it was stated that the Gavdos issue was a "military-technical" matter, and not a political one.¹³⁰ It is not known whether Turkey still considers that the Greek sovereignty over the island of Gavdos is in dispute.

129. TDN, 6 June 1996.

130. TDN, 12 June 1996.

(c) Turkish Claims and the EU

The Greek view that there exists a serious threat to its sovereignty over the Aegean territories was further confirmed by the submission of a Turkish memorandum to the rotating Italian EU presidency, by Turkish Foreign Minister Gonensay, which was asking the EU not to proceed with adopting the principle of protecting external borders, as proposed by Greece. This memorandum, which contained all of Ankara's views and positions on the inter-governmental conference and EU-Turkey relations, asked the EU to refuse to adopt Greece's positions on Community solidarity, believing that this would create "an asymmetrical situation" vis-à-vis Greece and Turkey. The memorandum was also expressing the view that since Athens' accession to the EU in 1981 the Community has abandoned "a care for balance" in the treatment of the two countries, followed until then by the Community.¹³¹

This last statement was probably due to the fact that some days after the Imia/Kardak crisis the European Commission expressed:

its full solidarity with Greece, a member State of the European Union...The Commission reminds that the decisions taken by the Council of Ministers on March 6, 1995, which concern customs union with Turkey...were aimed at creating conditions for an upgraded level of relations based on respect for democratic principles, international law and definitely excluding resort to force¹³²

and the European Parliament stated

A. having regard to Turkey's provocative military operations in relation to the isle of Imia in the Eastern Aegean...

C. having regard to Turkey's official statements making territorial claims and contesting the sovereign rights of an EU Member State,

D. whereas the islet of Imia belongs to the Dodecanese group of islands, on the basis of the Lausanne Treaty of 1923, the Protocol between Italy and Turkey of 1932 and the Paris Treaty of 1947, and whereas even on Turkish maps from the 1960s, these islets are shown as Greek territory,

E. whereas this action by Turkey forms part of a broader policy of questioning the status quo in the Aegean,

F. ...whereas these privileged relations between the Union and Turkey should automatically preclude any military aggression,

131. *Kathimerini* (Athens newspaper), 19 June 1996, 20 June 1996.

132. ANA, *Daily Bulletin*, 8 February 1996.

2. Gravely concerned by the dangerous violation by Turkey of sovereign rights of Greece, a Member State of the European Union, and by the build-up of military tension in the Aegean; ...

3. Stresses that Greece's borders are also part of the external borders of the European Union;

4. Calls for compliance by Turkey with international treaties, and in particular the OSCE, which insists that all disputes be settled by peaceful means in accordance with international law."¹³³

Also, the Turkish attitude of questioning the territorial integrity of Greece had as a result that Greece for its part decided to block European Union funds for Turkey "as long as Turkish aggressiveness persists."¹³⁴ Although the Greek government could not stop the customs union between the EU and Turkey, it was determined to block its implementation, as well as the 375-million-ECU aid package which went along with it.

(d) Sources of Tension and Cooling Off Period

In June 1996, the signing of a Greek-Armenian military cooperation accord angered the Turkish government.¹³⁵ Although the accord was probably an innocent *pro forma* agreement concerning the exchange of military attachés between the two countries, the Turkish Foreign Ministry spokesman said that the agreement was an attempt to encircle Turkey between Russia, Armenia, Syria and Greece. Also, the Turkish parliament had issued a text delivering a warning to Greece which continuously refused the dialogue calls of Turkey. Thus, the parliament warned Greece of its attitude "in order to maintain peace and preserve the Greek interests."¹³⁶

In the meantime, the U.S. government tried to intervene for resolving disputes between Greece and Turkey over the Aegean Sea. Thus, the White House stated that the U.S. was "trying to reduce tensions further and to settle the ownership question through an international tribunal, as the Greek government has proposed."¹³⁷ In a press statement, Turkey tried to suggest that the U.S. proposal referred to any "consensual body" and not necessarily to the

133. European Parliament, 14 February 1996, voted by 342 with 21 against and 11 abstentions.

134. ANA, *Daily Bulletin*, 28 February 1996.

135. TDN, 19 June 1996.

136. TDN, 21 June 1996.

137. *Kathimerini* (Athens newspaper), 8 February 1996.

ICJ.¹³⁸ Forced to clarify the remarks, U.S. State Department Spokesman Nicolas Burns left no doubt that the "international tribunal" was the ICJ at The Hague.¹³⁹ Greece accepted this position with some reluctance while Turkey showed its dissatisfaction.

Under these circumstances, it was understood that the only initiative that could be successful was the acceptance of a "cooling off period"¹⁴⁰ since it was rightly considered that an unrelated incident could easily provide the grounds for a larger confrontation between the heavily armed neighbors. NATO Secretary General Javier Solana proposed to Athens and Ankara that neither side would conduct military exercises during the summer. U.S. Deputy Undersecretary Tarnoff visited both countries and convinced their governments to accept the proposal according to which no exercises were going to take place between 1 July and 1 September.¹⁴¹ This constituted undoubtedly a moral victory for Greece since, as it was stated in a letter addressed from the U.S. president to the Greek prime minister on 1 July 1996, the moratorium was based on the CBMs that were incorporated in the "Memorandum of Understanding on Confidence-Building Measures" signed between Greece and Turkey in Athens on 27 May 1988.¹⁴² It has to be noted that Greece proposed the signing of a more formal text¹⁴³ whereas Turkey refused and preferred the moratorium to be based on a gentlemen's agreement.¹⁴⁴

Another element of extreme importance is that after the Imia/Kardak crisis instability dominated in Turkish domestic politics and the whole political system was in a transition. Thus, a meeting between the Greek and Turkish foreign ministers on 3 June 1996 was canceled by Greece due to the fact that there was no parliamentary support for Yilmaz's government which eventually resigned a few days later.¹⁴⁵ The assumption of the Turkish premiership by the leader of the Islamic party "Refah," Necmettin Erbakan, was not considered as a very welcome sign by Greece not only because "Erbakan Bey" was an Islamic fundamentalist, but also because he was the vice presi-

138. Press statement of the Turkish Embassy in Washington, 12 February 1996.

139. *TDN*, 15 February 1996.

140. *TDN*, 1 March 1996.

141. *TDN*, 4 July 1996.

142. *Kathimerini* (Athens newspaper), 4 July 1996.

143. *Kathimerini* (Athens newspaper), 5 July 1996.

144. *TDN*, 4 July 1996.

145. *ANA*, *Daily Bulletin*, 30 May 1996; see also *To Vima* (Athens newspaper), 2 June 1996; *TDN*, 3 June 1996.

dent of the Turkish government during the invasion of Cyprus in 1974. This view was confirmed when, immediately after the formation of an Islamic government in Turkey, provocative statements concerning the conversion of Agia Sophia Byzantine Cathedral into a mosque were repeated by Turkish ministers. The 1,500-year-old cathedral, a central emblem for the Christian Orthodox world, was used after the fall of Constantinople as a mosque until Kemal Ataturk turned it into a museum.¹⁴⁶

Tension between the two countries reached a dramatic stage when in August 1996 a Greek-Cypriot demonstrator, Anastasios Isaac, while participating in an anti-occupation protest on the U.N. Buffer Zone in Cyprus, was beaten to death by the Turkish occupation troops and members of the paramilitary nationalistic organization "Gray Wolves" with stones and batons. A few days later, his cousin, Solomos Solomou, while protesting against the continuous occupation, was shot three times by Turkish occupation forces, only a few minutes after the funeral of Isaac.

3. DIPLOMATIC CORRESPONDENCE AND LEGAL POSITION OF THE PARTIES

In contradiction to previous practice, both states gave from the first moment of the crisis wide publicity to their legal positions concerning the Imia/Kardak incident. It is obvious that each country was seeking to counter the attempt of the other to lobby the U.S. and the European Union.¹⁴⁷

(a) Turkish Legal Positions

Turkey disputed the Greek claim over Imia/Kardak and upheld the existence of "gray zones" in the Aegean on several grounds. Thus, according to the Turkish Ministry of Foreign Affairs, the 1914 Athens Decision of the Six Powers, which ceded all the Aegean islands to Greece, with the exception of the Dodecanese islands, Imbros, Tenedos and Kastellorizo, did not mention any islets or rocks. The same applies to the 1923 Lausanne Treaty which did

146. See statements of the Turkish Minister to the Prime Minister Tudc, 12 September 1996, ANA, *Daily Bulletin*, 13 September 1996; also statements of Turkish Culture Minister Guner about the Agia Sophia Cathedral in the Black Sea city of Trabzon, ANA, *Daily Bulletin*, 28 June 1996. These statements were not made only among the Islamist ministers; see also similar statement of Yilmaz, ANA, *Daily Bulletin*, 27 May 1995.

147. This wide publicity is not irrelevant to the fact that the Foreign ministries of both countries have sites on the Internet.

not refer to any islets or rocks. Article 12 of this treaty left under Turkish sovereignty all the islands which are situated within three miles from the Turkish coast. In Article 16, Turkey renounced all its rights to islands situated outside the three-mile zone of Article 12. In both Articles, there is no mention of islets or rocks. The only mention of the word "islets" is found in Article 15 where the title over the Dodecanese islands ceded to Italy is extended to "islets" dependent on any one of the islands listed in the same Article.

Article 15 of the Lausanne Treaty is repeated almost verbatim in the Paris Treaty of 1947, which turned over the Italian sovereignty of the Dodecanese islands to Greece. Article 14.1 enumerated the islands ceded to Greece in name one by one. The term "dependent islets" was replaced by the term "adjacent islets." The "Kardak rocks...can neither be defined as being adjacent nor could they be termed as islets."¹⁴⁸ Furthermore, Imia/Kardak lie 5.3 miles from the nearest island, Kalymnos, which is listed as under Greek sovereignty in Article 14 of the Paris Treaty. In this context, Imia/Kardak "which lie at 3.8 nautical miles off the Turkish mainland belong to Turkey." Concerning the fact that Imia/Kardak are closer to the Greek island of Kalolimnos than to the Turkish coast, the Turkish Foreign Ministry considers that Kalolimnos is adjacent to Kalymnos. "In international law, there is a concept of the 'adjacent's adjacent.' Therefore, the Kardak rocks cannot be considered as 'adjacent's adjacent' under international law."¹⁴⁹

Regarding the Greek views on the existence of a Turkish Italian Agreement of 4 January 1932 and an agreement dated 28 December 1932 concerning the possession of "the small southeastern islands in the Aegean and the delimitation of territorial waters in the region," these "have been at that time negotiated within the context of the particular political situation of the pre-Second World War era."¹⁵⁰ The Agreement of 4 January did not concern Imia/Kardak. This Agreement was ratified and registered with the League of Nations as stipulated under Article 18 of the League's Charter. Only the second agreement referred briefly to the two islets. Nevertheless, the "December Protocol bears no reference to the January 1932 Protocol so as to suggest any

148. Second Turkish *note verbale*, 29 January 1996. According to the letter of the Turkish ambassador to NATO, Italy approached Turkey only once in November 1936.

149. "Legal Backgrounder on the Kardak Crisis in a Nutshell: Etiology of a Package Approach" published on the World Wide Web site of the Turkish Foreign Ministry (<http://www.mfa.gov.tr/grupf/kardak/kardak15.htm>).

150. Second Turkish *note verbale*, 29 January 1996.

linkage."¹⁵¹ Turkey considers that the legal procedures with regard to the second Agreement "were not completed."

The reasons for the non-completion are

- the non-ratification of the agreement by both sides, which is for Turkey a constitutional prerequisite for any agreement to take effect,¹⁵²

- the non-registration of the agreement with the League of Nations according to Article 18,¹⁵³ and

- the opinion expressed by "some legal experts...that save for the signatures affixed under this document, its legal format resembles a report rather than a Protocol."¹⁵⁴ According to this view, the second agreement "is merely a protocol covering discussions held between Turkish and Italian representatives."¹⁵⁵

The fact that the December 1932 agreement is not valid is further proved by the fact that the Italian side made several demarches asking about the modalities to give effect to the above-mentioned agreement.¹⁵⁶ Furthermore, during the negotiations of the 1947 Paris Peace Treaty, Greece submitted a proposal asking for the treaty to make a reference to the two 1932 agreements. This proposal was not accepted and no such reference was included in the text of the treaty. After the Paris Treaty, Greece made "four demarches to Turkey in 1950, 1953, 1955 and 1956—two of which were *notes verbales*."¹⁵⁷ In these demarches, Greece proposed "talks with a view to exchange letters between the two governments ascertaining the validity of the above-mentioned two documents [the 1932 agreements] between Turkey and Greece."¹⁵⁸ The Greek demarches were declined by Turkey. According to the Turkish Foreign Ministry, this implies (a) that Greece had doubts as to the validity of the said documents, and (b) that "Greece's claim of Turkish acquiescence or silence is groundless."¹⁵⁹

151. "Legal Background on the Kardak Crisis in a Nutshell," *supra*, fn.149.

152. *Ibid*.

153. Second Turkish *note verbale*, 29 January 1996.

154. "Legal Backgrounder on the Kardak Crisis in a Nutshell," *supra*, fn.149.

155. Letter of the Turkish ambassador to NATO, 728/9 February 1996.

156. "Legal Backgrounder on the Kardak Crisis in a Nutshell," *supra*, fn. 149.

157. *Ibid*.

158. Second Turkish *note verbale*, 29 January 1996.

159. "Legal Backgrounder on the Kardak Crisis in a Nutshell," *supra*, fn. 149.

Another point that Turkey mentioned is that state practice does not offer any evidence as to the manifestation of acts of sovereignty "like a lighthouse or installations, on the Kardak rocks."¹⁶⁰ Moreover, "Greece also tries...to base her claims in the Greek Law 518/1948. It goes without saying that national legislation such as the above-mentioned law entails no legal consequences in international law."¹⁶¹

Turkey also points out that Article 14.2 of the Paris Treaty stipulated that the Dodecanese islands "shall be and shall remain demilitarized." Greece did not fulfill this obligation although it attempted to invoke another Article of this treaty in order to assume rights.¹⁶² The "relinquishment of sovereignty is conditioned upon demilitarization. Both issues are based on the same treaty provisions."¹⁶³

The conclusion of the Turkish legal positions is that Imia/Kardak "are not the only rocks" whose status needs to be determined "together with the islets." Even if the problem of the sovereignty over Imia/Kardak is to be solved, the existence of many "islets and rocks" which share the same status as the two islets is a potential source of conflict.¹⁶⁴ The whole problem of the sovereignty over all these islets has to be determined by relevant agreements between Greece and Turkey or after a third-party settlement. The sovereignty over these islets and rocks has "ramifications on the delimitation issues" since these islets constitute the baselines for the delimitation of the continental shelf and the EEZ.¹⁶⁵

(b) Greek Legal Positions

The Greek views concerning the legal regime of the Imia/Kardak islets are evidenced in the *notes verbales* addressed to Turkey, as well as in numerous statements concerning the matter which were addressed to several organizations. Thus, according to Greece, there are at least three international agreements which establish beyond any doubt Greek sovereignty over Imia/Kardak. The 1923 Treaty of Lausanne limits Turkish sovereignty only to islands lying within three miles of the Turkish coasts, with the exception of

160. Ibid.

161. Second Turkish *note verbale*, 29 January 1996.

162. Ibid.

163. "Legal Backgrounder on the Kardak Crisis in a Nutshell," *supra*, fn. 149.

164. Ibid.

165. Ibid.

the three insular formations at the entrance of the Dardanelles. According to Article 16, Turkey renounced "all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present treaty and the islands other than those over which her sovereignty is recognized by the said treaty."¹⁶⁶

Furthermore, Italy and Turkey signed on 4 January 1932 a "Convention" concerning the sovereignty of the islets and rocks situated between the coasts of Anatolia, the island of Kastellorizo, the islet of Kara-Ada and the delimitation of the territorial waters in that area. Following this Convention and "on the occasion of the signature...the two parties exchanged letters foreseeing the signature of a supplementary agreement concerning the delimitation of the remaining maritime boundary" which separated the Dodecanese islands from Turkey.¹⁶⁷

The second agreement between Italy and Turkey was signed on 28 December 1932. Point 30 of this agreement referred to the Imia/Kardak islets as belonging to Italy and to the islet Kato as belonging to Turkey. The January 1932 Convention was ratified by both parties, the instruments of ratification were exchanged and the Convention was submitted to the Secretariat of the League of Nations. The December 1932 agreement "being an annex to the original convention was not submitted to the League of Nations, since it forms an integral part of the initial agreement."¹⁶⁸

The third source which confirms the Greek sovereignty over Imia/Kardak is the 1947 Paris Peace treaty, signed between the Allied Powers and Italy. According to this treaty, Italy ceded the Dodecanese islands and all adjacent islets to Greece. Under international law, the successor state automatically assumes all the rights and obligations that have been established by international treaty between the initial possessor state and every third party. There is clearly no need for any confirmation of the validity of any treaty regulating the status of the ceded territories.¹⁶⁹

In addition to the above-mentioned arguments, Greece claimed that it exercised repeatedly its sovereign rights over the Imia/Kardak islets. The

166. "Turkish Foreign Policy and Practice as Evidenced by the Recent Turkish Claims to the Imia Rocks," published on the World Wide Web site of the Greek Foreign Ministry (<http://www.mfa.gr>).

167. First Greek *note verbale*, 10 January 1996.

168. Ibid.

169. "Turkish Foreign Policy and Practice," *supra*, fn. 166.

Greek Geographic Service has installed a trigonometric marker on the larger Imia/Kardak islet and used it for its purposes. Environmental activities by Greece and the European Union have been carried out on the Imia/Kardak islets since 1984. In 1984, the Imia/Kardak islets were included among 42 other islets in the "Arki and Lipsi islands area" which has been registered with the European Community's environmental protection program CORINE.¹⁷⁰ The two islets of Imia/Kardak were also registered by the National Center for Wildlife and Marine Wildlife Areas.¹⁷¹ Since 1988, staff of the Greek University of Patras was engaged in studies of the flora of the eastern Aegean islands which included *inter alia* the Imia/Kardak islets.¹⁷² Moreover, Greek shepherds are the owners of the goats that graze on the islets.¹⁷³

According to Greece, while these activities were taking place, Turkey never raised the slightest objection nor did it create any problem because it has never challenged the status of these islets in the past. It was only during the January 1996 crisis that Turkey laid claim to Greek sovereign territory.¹⁷⁴ Finally, the fact that Turkey is indirectly challenging the effect of the Paris Treaty is considered by Greece as evidence that Turkey is not only challenging the sovereignty over Imia/Kardak, but is also questioning the sovereignty over all the Dodecanese islands.¹⁷⁵

4. THE "FORGOTTEN" ISLANDS OF IMBROS AND TENEDOS

In June 1996, the Parliamentary Committee on Foreign Affairs and Defense of the Greek parliament examined for the first time in its history the case of the two islands of Imbros and Tenedos which remained under Turkish sovereignty according to Article 14 of the Lausanne Treaty. Refugees from the two islands as well as Greek diplomats and international lawyers were invited to the session of the Committee and they expressed their views con-

170. "Ecology and the Imia Islets," published on the World Wide Web site of the Greek Foreign Ministry (<http://www.mfa.gr/foreign/bilateral.ecoen.htm>).

171. In the framework of EC Directive 92/43 and the EEC's NATURA 2000 program; registration nr. (A42100010).

172. Funded by the Greek national program PENED.

173. "Turkish Foreign Policy and Practice," *supra*, fn. 166.

174. "Ecology and the Imia Islets," published on the World Wide Web site of the Greek Foreign Ministry (<http://www.mfa.gr/foreign/bilateral.ecoen.htm>).

175. "Turkish Foreign Policy and Practice," *supra*, fn. 166.

cerning the situation of human rights in these territories.¹⁷⁶ The Committee submitted its proposals to the Greek Foreign Ministry and less than a month later it was revealed that the Greek government was intending to pursue the issue either in the Council of Europe, the CSCE or the competent organs of the U.N.¹⁷⁷

The whole issue is of particular importance to the future of Greek-Turkish relations. Recourse to a third-party settlement on the situation in Imbros and Tenedos will have an impact insofar as the weight of the matter will shift from the area of political-military confrontation over the territorial sea, the continental shelf and Greek sovereignty over the rocks of the Aegean to the area of fulfillment of obligations of the two states towards minorities. Therefore, it is important to understand the basic factors of the issue which is also connected with the territorial settlement as outlined in the Lausanne Treaty.

The two islands were occupied by the Greek navy as of 1912 when the Greek population of the islands amounted to 9,207 inhabitants in Imbros and 5,420 in Tenedos.¹⁷⁸ Due to the position of the islands near the mouth of the Dardanelles, they were awarded to Turkey during the Lausanne Conference for reasons of safety of the Turkish straits. Nevertheless, Article 14 of the Lausanne Treaty exempted the islanders from the compulsory exchange of populations and granted them with a special status of rights for a local administration, a local police force and protection of persons and property. Thus:

The islands of Imbros and Tenedos, remaining under Turkish sovereignty, shall enjoy a special administrative organization composed of local elements and furnishing every guarantee for the native non-Moslem population insofar as concerns local administration and the protection of persons and property. The maintenance of order will be assured therein by a police force recruited from amongst the local population by the local administration above provided for and placed under its orders.

The provisions of this Article together with the obligations of the Turkish government to protect the free exercise of religion, civil and political

176. Parliamentary Committee on Foreign Affairs and Defense of the Greek Parliament, 13 June 1996; see *Kathimerini* (Athens newspaper), 14 June 1996.

177. *Kathimerini* (Athens newspaper), 2 July 1996.

178. Alexandris, *The Greek-Turkish Relations, 1923-1987*, 1988, p.52

rights, free use of any language in private, press, commerce, religion, the teaching of the Greek language in primary schools and the establishment of charitable, religious and social institutions as set forth in Articles 37 through 44 provided an ideal framework for the flourishing of an ethnic minority. Thus, the Greek population of the islands, which after the cession of the islands to Turkey had already begun evacuating, was finally convinced to remain.¹⁷⁹

Nevertheless, the Turkish authorities never observed the Lausanne Treaty provisions. A number of the inhabitants of these islands, who were temporarily residing abroad, were forbidden to return.¹⁸⁰ In October 1923, they chose the members of the local administration, while police, port authorities and customs were staffed by Turkish officers.¹⁸¹ As early as 1926, the British liaison officer for the Aegean reported to his government that "the Turkish government has taken no steps to administer Imbros and Tenedos in accordance with the Treaty of Lausanne."¹⁸²

In 1927, Turkish Law 1151/1927 passed concerning local government, and the rules for the administration of the islands were introduced. Articles 3 and 4 provided the powers of the local governor, but there were no provisions for his election by the inhabitants of the islands. Local administration has been denied ever since.¹⁸³ Article 14 abolished the teaching of the Greek language. The result was that the wealthiest among the islanders sent their children to study on the nearby Greek islands.¹⁸⁴ The only reaction of the Greek government to all these violations of the Lausanne Treaty was the submission of a memorandum to the League of Nations.¹⁸⁵ As a result of the Turkish policy, the 1927 Turkish census found that the population of the islands had diminished to 6,762 ethnic Greeks on Imbros and 1,631 on Tenedos.¹⁸⁶ During

179. Sifounakis, 1996, pp.56-82.

180. Ladas, 1932, p.418; Alexandris, *The Greek-Turkish Relations, 1923-1987*, 1988, p.52, fn.66.

181. See Alexandris, *The Greek-Turkish Relations, 1923-1987*, 1988, p.52, fn.65.

182. Alexandris, *JHD*, 1980, p.10-19.

183. Alexandris, *Birthplaces of Hellenism*, 1996, pp.7-8.

184. Alexandris, *The Greek-Turkish Relations, 1923-1987*, 1988, p.57.

185. LN/C.131.1925 VII, 5 March 1925.

186. Ladas, 1932, p.418.

the same period, the first settlers from Anatolia started arriving on the islands.¹⁸⁷

The Greek-Turkish rapprochement in the early 1950s resulted in Turkey's adopting a more broadminded attitude towards the Greek minority on Imbros and Tenedos. Article 14 of Turkish Law 1151/1927 was replaced by Law 5713/1951 which allowed Greek to again be taught in the schools on the same footing as the Greek minority schools in Istanbul. During the years 1950-1963, Turkey followed a more liberal policy and, although it did not abide by its obligations under international law, it gave the islands the opportunity to increase their cultural and economic standards.¹⁸⁸

The fate of the two islands was sealed during the Cyprus crisis in 1963-64. In 1964, Turkey introduced Law 502/1964 which prohibited the teaching of the Greek language.¹⁸⁹ It also confiscated any community property including schools. The main event took place in 1965 when 2,000 acres of fertile land in Imbros were expropriated for the establishment of an open agricultural prison for Turkish long-term convicts. The threats and murders which took place after the establishment of the open prison and the prohibition of the teaching of the Greek language pressed many Greeks to leave their birthplace. From a total population of 8,500 ethnic Greeks in 1927, there are now less than 300 Greeks in Imbros and 45 in Tenedos.¹⁹⁰ These people are obliged to be supported by Imbriot emigrés in Greece and the United States. In 1968, another 8,000 acres of land in Imbros were expropriated for the creation of a state-owned estate. Another 1,500 acres were expropriated in 1975 for the creation of a dam. The remaining 250 acres of land in Imbros were confiscated by the Turkish state in 1984.¹⁹¹ The same year, 11,000 acres of grazing land on Imbros were designated as protected forests or reforestation areas and grazing was forbidden.¹⁹² After 1963, more than 9,000 settlers from the Turkish mainland were established on the two islands. In the years between 1960 and 1990, 200 churches and chapels were destroyed.¹⁹³

187. Alexandris, *The Greek-Turkish Relations, 1923-1987*, 1988, p.57.

188. *Ibid.*, p.143.

189. Zeginis, *Birthplaces of Hellenism*, 1996, pp.36-37.

190. Alexandris, *Birthplaces of Hellenism*, 1996, p.18.

191. Decision No.1016/26 June 1984 of the Prefecture of Canakkale.

192. Alexandris, *The Greek-Turkish Relations, 1923-1987*, 1988, p.518.

193. "The Greeks of Turkey," Helsinki Watch Report, 1992, p.28.

The Greek government tried in 1964 to internationalize the problem of the violation of human rights on the two islands. It addressed several memorandums and letters to the secretary general of the U.N.,¹⁹⁴ and brought the issue of the prohibition of the teaching of the Greek language to the UNESCO General Assembly. The Cold War era and the attitude of many western countries of following a policy of equal distances from Greek-Turkish disputes disappointed the Greek government which was later convinced not to pursue the issue to the ICJ in accordance with Article 44.¹⁹⁵

The reopening of the issue in 1996 for the first time since the Turkish invasion of Cyprus, especially by the Greek parliament which was never involved in this issue in the past, constitutes a significant change in Greek foreign policy. The denial of the rights of the ethnic Greeks on Imbros and Tenedos in violation of the Lausanne Treaty and international human rights agreements shows a different path. In the years following 1993, the problem of the continental shelf ceased to have priority over the other problems of the Aegean, especially that of the extension of the Greek territorial sea, and the same thing happened with the case of Imbros and Tenedos.

5. TWO INITIATIVES FOR PEACE AND STABILITY IN THE AEGEAN

The aftershocks of the Imia/Kardak incident and the ascertainment that peace and stability in the region were under serious threat resulted in different proposals concerning the relations of the two countries. On 24 March 1996, Turkish Prime Minister Mesut Yilmaz initiated a "peace process" to resolve the tensions between Greece and Turkey. He called on Greece to enter into negotiations on all the outstanding issues between the two countries and said that the Turkish government was open to the settlement of these issues even if this involved seeking the help of "appropriate methods of settlement."¹⁹⁶ Yilmaz's initiative is very important and constituted a radical change in Turkish foreign policy. Turkey had opposed since 1975 any suggestion of third-party settlement and consistently argued that the bilateral disputes should be settled through dialogue.

194. Security Council, S/5884/29 July 1964; Security Council, S/5933/5 September 1964; Security Council, S/5946/9 September 1964; Security Council, S/5997/2 October 1964.

195. Alexandris, *The Greek-Turkish Relations, 1923-1987*, 1988, p.521.

196. Yilmaz's statement was kindly offered by the Turkish Embassy in Athens.

The second initiative was initiated by Greece although it came from the EU. In practice, it aimed to establish the minimum standards for a *modus vivendi* between Greece and Turkey. Thus, on 15 July 1996, the European Union's Council of Foreign Ministers endorsed a regulation of the Euro-Mediterranean Co-operation Programme (MEDA) and issued a declaration with which *inter alia* it expressed concern over the problem caused by Turkey concerning Imia and called on Turkey to commit itself to complying with international law and the international community's established rules of behavior as they were set out by the EU for the smooth continuation of its relations with the Community. The importance of these two initiatives and the apparent relationship between them are the reasons that they are examined together.

(a) *The Turkish Initiative*

(i) *Yilmaz's Proposals and Greek Reactions.* On 24 March 1996, Yilmaz, in a key policy statement, called Greece to enter into unconditional negotiations with Turkey. More specifically, Yilmaz referred to the rapprochement between Venizelos and Ataturk and compared it with the tense period that the two countries experienced during the Imia/Kardak crisis. He stated that an eventual settlement of the Aegean issues "will only be viable and lasting if it is built on the fundamental rights and legitimate interests of both countries." He also declared that Turkey is a law-abiding country and "in keeping with international law, she has always respected the territorial integrity and inviolability of borders of all her neighbors, including Greece." The main dimensions of Yilmaz's initiative were the following:

- He called on Greece to enter into negotiations "*without preconditions* with a view to settling all the Aegean questions *as a whole*" (emphasis added)
- The negotiations were to be conducted "on the basis of respect for international law and the international agreements establishing the status quo in the Aegean" with the aim to succeed via "a peaceful settlement based on international law and legitimacy."
- No method of mutual acceptance was ruled out by Turkey from the outset. This approach included Turkish readiness "to discuss with good will appropriate third-party methods of settlement" which were not "to exclude from the beginning any method of settlement including third-party arbitration."

- In the transitional period, a "swift agreement" was proposed to be drafted between the two countries "on a comprehensive set of confidence building measures related to military activities."

- Concurrently with the process of the peaceful settlement of the Aegean issues, negotiations were to be started with the aim of the conclusion "of a political document/declaration" containing the basic principles that would govern the relations between the two countries "or an agreement of friendship and cooperation."

The first reaction of the Greek government to the Turkish initiative was made by the Greek foreign minister who, commenting on Yilmaz's statements, said that "apart from positive points there were also many inaccuracies and remarks aimed at making an impression for the benefit of international public opinion."¹⁹⁷ Also, Government Spokesman Demetrios Reppas noted that despite this initiative Turkey had not abandoned its threat of war with regard to Greece's right to extend its territorial waters. He asked Turkey to take the first step by eliminating the source of tension that it created with the 1995 Turkish parliament's decision and to substitute acts of peace for threats of war.¹⁹⁸

He also noted that Greece's past efforts to sit down at the negotiating table with Turkey had borne no fruit, a view which was shared by the Greek foreign minister as well, who recalled the Karamanlis-Demirel agreements on dialogue on the issue of the Aegean continental shelf in 1975 and the Papoulias-Yilmaz agreement on dialogue at the level of foreign ministry political directors.¹⁹⁹ Thus, it was considered as pointless to resume a similar course of action unless "self-evident prerequisites" had been met. These were "respect for international law and treaties, renouncing violence or threats of violence, and referral of disputes to the International Court at The Hague."²⁰⁰

The government spokesman also expressed the view that Yilmaz's positions on respecting the status quo in the Aegean "conceal intent to have Greece prevented from exercising its inalienable right to extend its territorial waters from six to twelve miles" and they left open the means of tackling issues by claiming that they can be resolved "in various ways and not always on the basis of international law and international agreements." Concerning the Turkish proposal for the Confidence Building Measures, Yilmaz was

197. ANA, *Daily Bulletin*, 26 March 1996.

198. See *supra*, pp.340-342.

199. See statements by Theodoros Pangalos, ANA, *Daily Bulletin*, 27 March 1996.

200. ANA, *Daily Bulletin*, 26 March 1996.

asked to accept and honor his signature affixed to the Vouliagmeni Protocol in 1988, and Turkey was asked to stop airspace violations.

In spite of the presumptions of some analysts that Yilmaz's announcement was aimed at getting Greece to lift its veto over EU credits of the Customs Union Accord with the EU, the Turkish prime minister insisted on his initiative even after the Turkey-European Union Association Council meeting scheduled for 24 March 1996 had been postponed. Some days after the announcement, and notwithstanding sharp criticism even from inside Yilmaz's party,²⁰¹ Turkish Foreign Minister Gonensay said that Turkey "had the patience to wait for a reasonable period."²⁰²

The answer of the Greek government was that if Premier Mesut Yilmaz or the Turkish government decided to refer the Imia issue to the International Court at The Hague, Greece would assess the proposal and reply accordingly: "However, until now, Yilmaz has only made comments without the slightest commitment."²⁰³

(ii) *The Substance of the Turkish Proposals.* The Turkish proposals undoubtedly constituted a very positive step towards the end of a climate conducive to the eruption of new crises between the two countries. For example, an important passage of the Turkish prime minister's announcement was the reference to the status quo of the Aegean, which had been established by international treaties, because a few days earlier, on 20 March 1996, the Turkish government told representatives of the Italian EU presidency who visited Ankara that it only recognized the international agreements it had signed.²⁰⁴ It has to be recalled that Turkey was not a participant in or a signatory to the 1947 Paris Peace Treaty.

Were these proposals enough, however, for the initiating of a process of peaceful settlement? First, some of Yilmaz's statements have to be disregarded, such as Turkey's respect for the territorial integrity and inviolability of borders of all its neighbors. The Turkish invasion of Cyprus in 1974 and the occupation of almost half of the island since then, despite repeated U.N. resolutions, the occasional intrusion of Turkish troops into Iraqi territory and the bombardment of Iraqi areas, and the invasion of Turkish forces into northern Iraq for several weeks in March and April 1995 due to PKK opera-

201. See statements of Kamran Inan, *TDN*, 26 March 1996.

202. Statements made in the TV program "32nd Day" on 27 March 1996.

203. *ANA, Daily Bulletin*, 18 June 1996.

204. *ANA, Daily Bulletin*, 21 March 1996.

tions in these regions prove that Turkey does not necessarily respect the "territorial integrity and inviolability of borders of all its neighbors." Nevertheless, these statements do not constitute the essence of the Turkish proposals.

Some of Yilmaz's positions needed clarification since they entailed obscurities. Thus, one point that needed clarification was the exact meaning of the Aegean status quo. Greece does not accept any discussion of its territorial sovereignty over the Aegean islets and rocks, with the possible extension of the Imia/Kardak islets, whereas Turkey still lays claims on these insular formations. A second point was Yilmaz's reference to the settlement of all Aegean questions "as a whole." Was this tantamount to a package deal approach, which in principle is not accepted by Greece?

Another very important point was the meaning of the "third-party methods of settlement" or "third-party arbitration." This did not mean necessarily that Yilmaz spoke of recourse to the ICJ. Third-party settlement of disputes involves mediation, conciliation, arbitration and judicial settlement. Mediation and conciliation are not based solely on international law since other elements are involved, such as political considerations. Arbitration is usually based on international law but it can also be based on some other basis. In the *Rainbow Warrior* affair,²⁰⁵ the Arbitrator "considered that his function was to find an acceptable result, rather than to determine the parties' legal rights."²⁰⁶ Among the above-mentioned ways of third-party settlements of disputes, only judicial settlement is based solely on international law. Thus, it is obvious that recourse to the ICJ, and therefore application of exclusively international legal considerations, is only one of four different interpretations of Yilmaz's initiative, and it may be important that the ICJ was not mentioned at all by the Turkish prime minister.

To make things more complicated, various interpretations were given to Yilmaz's initiative by official Turkish sources. Thus, Turkish Foreign Minister Gonensay expressed the view that in the *Aegean Sea* case the ICJ decided that "this was a matter that had to be sorted out between Turkey and Greece. So any decision to be taken will be arrived at mutually. There can be no decision to be imposed on the two sides from the outside."²⁰⁷ Although this sentence was aiming to convince Turkish public opinion that taking Aegean

205. *Rainbow Warrior* ruling, *ILR*, Vol. 74, p.241.

206. Merrills, 1991, p.94.

207. *TDN*, 28 March 1996.

disputes to the ICJ carried no risks for Turkey, it did not make any sense since all judicial decisions are imposed on the parties involved from outside and are not decided by the parties themselves.

Also, the Turkish Embassy in Athens, in a rather unprecedented move in the diplomatic history of the two states, issued an announcement which tried to explain to the Greek people the meaning of the proposed peace process.²⁰⁸ The advantage of the announcement was that it specifically mentioned that, in case of "serious disagreement" between the two parties "on the nature of the disputes in the Aegean," the problem areas could be defined "by a previously agreed upon legal body proceeding on the basis of international law." The main disadvantage of the announcement was that, although Yilmaz asked for the two countries to enter into negotiations without preconditions, the Turkish Embassy explained that, in case third-party settlements were to be invoked, both sides had to accept the principle that "the geographical areas involved are only those which lie outside existing areas of jurisdiction (i.e., six mile territorial waters) in the Aegean Sea" and they had to pledge themselves "not to engage in unilateral extension of existing areas of jurisdiction or the creation of new ones." In other words, Greece was asked to refrain from the exercise of a legitimate right, namely, the extension of its territorial sea, as a precondition for recourse to a third-party delimitation.

Nevertheless, the main problem of the real Turkish intentions was created by the fact that some hours before Yilmaz's announcements, the Turkish government rejected the text on "common positions," agreed to by the fifteen EU partners. The EU-Turkey Association Council, trying to smooth over Greece's objections to Community funding for Turkey within the framework of the 1995 EU-Turkey customs union, proposed a statement which contained certain basic principles of international law which read as follows:

The Council has agreed that the following principles should apply:

- the renunciation of the use of force or the threat of force in the bilateral relations,
- the respect of the principle of sovereignty and territorial integrity—the respect of international law and Treaties and the relevant international practice,
- the identification of appropriate mechanisms, in accordance with international law, for the peaceful resolution of disputes, in particular the ICJ

208. "Turkey's Aegean Peace Process Initiative: What it Really Means," Athens, 27 March 1996; the announcement was kindly offered by the Turkish Embassy in Athens.

or another judicial dispute resolution mechanism on which both sides could agree,

- the application of the principle of good neighborly relations,
- the pursuance of dialogue along the lines which have emerged in previous bilateral contacts which may contribute to the improvement of the bilateral relations, as well as
- the establishment of a crisis prevention mechanism.

The Council invites/calls upon Turkey to commit herself to these principles."²⁰⁹

The fact that the renouncement of the use of force, the respect of international law and treaties and the recourse of any differences to the ICJ were not accepted by Turkey was undoubtedly a bad sign. The explanation given by the Turkish government was that it did not accept the three principles only because it believed that the discussion on these should not be conducted on the EU level but on a bilateral Greek-Turkish level.

(b) The Declaration Adopted by the 15 EU Ministers of Foreign Affairs

On 15 July 1996, the European Union's Council of Foreign Ministers endorsed the regulation of the Euro-Mediterranean Co-operation Programme (MEDA) and issued a declaration according to which:

The European Union has followed with serious concern the situation that has emerged as a consequence of the issue raised by Turkey concerning the Imia islet. ...

The Council recalls its attachment to the development of good neighborly relations among all countries of the region...[and] recalls that relations between Turkey and the European Union have to be based on a clear commitment to the principle of respect for international law and agreements, the relevant international practice, and the sovereignty and the territorial integrity of the Member States and of Turkey.

The Council considers that disputes should be settled solely on the basis of international law. Therefore, the Council calls for restraint and avoidance of any action liable to increase tensions, and specifically the use or threat of force, and considers appropriate that dialogue should be pursued along the lines which have emerged in previous contacts between the interested parties which may contribute to the improvement of bilat-

209. Text from ANA, *Daily Bulletin*, 27 March 1996.

eral relations as well as to the establishment of a crisis prevention mechanism.

The Council further underlines that the cases of disputes created by territorial claims, such as the Imia islet issue, should be submitted to the International Court of Justice.

The Council requests the Presidency to invite Turkey to indicate whether she commits herself to the aforementioned principles.²¹⁰

The Council of EU Foreign Ministers also accepted two amendments submitted by the European Parliament, which stated that the Community's Mediterranean policy should contribute to the general aim of developing and consolidating democracy and a state of justice, of respect for human rights and fundamental liberties and of promoting relations of good neighborliness as part of the observance of international law. The statement for the respect of territorial integrity and external borders of member states and third countries in the Mediterranean was also repeated.

It is obvious that the Council of EU Foreign Ministers repeated in a more formal and elaborate manner the principles embodied in the EU-Turkey Association Council of 24 March 1996, which were ignored by Yilmaz. As has been stated earlier, the statement aimed to establish initially a *modus vivendi* between the two countries which, if accepted, could lead to a settlement of the disputes between Greece and Turkey on the basis of international law. The statement did not need clarification and, in fact, embodied six principles, namely:

- commitment to the principle of respect for international law and agreements, the relevant international practice,
- respect of the sovereignty and the territorial integrity of the member states and of Turkey,
- acceptance that disputes should be settled solely on the basis of international law,
- restraint and avoidance of any action liable to increase tensions, and specifically the use or threat of force,
- dialogue for the improvement of bilateral relations and establishment of a crisis prevention mechanism and

210. Declaration adopted by the fifteen ministers of foreign affairs of the EU at the General Affairs Council on 15 July 1996, Brussels, SN 3543/96.

- recourse to the ICJ for disputes created by territorial claims.

These principles can be described as the "self-evident minimum standards" for international peace, stability and settlement of disputes.

Greece had many reasons to be satisfied. The EU Council statement was the result of its continuous diplomatic efforts. Also, it was the first time that the EU had expressed understanding for Greece's position in such a way. Moreover, it is significant that the Council's decision entrusted the Irish EU presidency with calling on Turkey to declare its commitment on the basis of the aforementioned principles. Finally, this statement was considered as the Greek answer to Yilmaz's initiatives in March 1996. According to the Greek government spokesman, Greece's future relations with Ankara were to "be built on this basis [of the statement] with respect to Turkey's European perspective."²¹¹ He also intimated that Greece would continue to veto the customs union if Turkey failed to alter its stance.

Turkey, on the other hand, preferred not to answer to the substance of the EU Council statement. Turkish Foreign Ministry Spokesman Akbel said that the European Union's decision to approve the Regulation for the MEDA program was a "positive step, and in accordance with its obligations towards Turkey." He also mentioned that the economic cooperation between Turkey and the EU, interrupted in 1981, would resume and he added that "the declaration issued simultaneously with this decision, regarding Greek-Turkish relations, is being appraised by the Turkish side, and our views on this subject will be announced at a later date."²¹²

Many months have elapsed since that statement of the Turkish Foreign Ministry and no answer was given by Turkey to the EU call. During the subsequent meeting of the EU Summit on 14 December 1996, the EU presidency underlined its desire for close links with Turkey but warned that human rights issues and tensions with EU-member Greece remained an obstacle. The principles of the statement of the EU Council of Foreign Ministers were also repeated:

The European Council invites the Presidency to continue its efforts following the Council's declaration of 15 July 1996 to promote an acceptable solution to the situation in the Aegean area in accordance with es-

211. ANA, *Daily Bulletin*, 16 July 1996.

212. ANA, *Daily Bulletin*, 17 July 1996.

tablished international norms and to pursue contacts with the Turkish government with a view to an early Association Council.²¹³

6. ATTEMPTS AT REDUCING TENSION

A year after the Imia/Kardak crisis, the relations between the two NATO allies were stalemated. Athens accused Ankara of trying to change the status quo in the Aegean, and Turkey was often described as "the main destabilizing factor" in the eastern Mediterranean.²¹⁴ Turkey continued claiming that the problem concerning islets or rocks in the Aegean remained unsolved²¹⁵ and proposed direct dialogue aimed at solving all the problems between the two countries.²¹⁶ Greece for its part, indirectly warned that if Ankara caused any further military "incidents" Greece would immediately exercise its right to extend its territorial waters from six to twelve nautical miles.²¹⁷ It is interesting to note that during this period the United States did not rule out the possibility of a military conflict in the Aegean, and they expressed their decision to intervene in such a case.²¹⁸

The problems between Greece and Turkey also attracted the attention of the EU. After a meeting between EU Commissioner Hans van den Broek and Turkish Deputy Minister of Foreign Affairs Onur Oymen in February 1997, the commissioner pointed out to Mr. Oymen that Turkey's reply to the decision taken by the General Affairs Council on 15 July 1996 was still pending.²¹⁹ In March 1997, Turkish Foreign Minister Tansu Ciller sent a confidential letter to the EU which provided some guarantees regarding Greek-Turkish relations.²²⁰ Nevertheless, the Greek government did not consider the letter to be in line with the EU's positions mentioned in the document of 15 July

213. Invitation of the 15 EU leaders to the Presidency, 14 December 1996, Dublin.

214. ANA, *Daily Bulletin*, 16 January 1997, statement of Greek Premier Costas Simitis.

215. *Wall Street Journal*, 25 February 1997.

216. *Hurriyet*, Istanbul newspaper, 3 February 1997, statement by Turkish Foreign Minister Tansu Ciller.

217. Statement of Greek Minister of National Defense Akis Tzochatzopoulos to the Thessaloniki Bar Association, 17 February 1997.

218. Interview with U.S. Ambassador to Athens Thomas Niles, *To Vima*, Athens newspaper, 6 April 1997.

219. ANA, *Daily Bulletin*, 15 February 1997.

220. *Hurriyet*, Istanbul newspaper, 5 March 1997.

1996. During the EU-Turkey Association Council on April 1997, Greece maintained its veto and continued blocking aid worth 375 million ECUs. As it has been explained, the veto was to be maintained until Turkey stopped disputing Greek sovereignty in the Aegean.²²¹

The Association Council's common text specifically mentioned that the strengthening of relations between the European Union and Turkey was dependent primarily on three factors:

- an improvement in relations between Greece and Turkey through the settlement of issues concerning them on the basis of international law, including mechanisms such as the ICJ, as well as through relations of good neighborliness and the rejection of the threat or use of force,
- an improvement in the situation regarding human rights in Turkey and
- respect for human rights and the finding of a political solution to the Kurdish problem.²²²

(a) Confidence Building Measures

The problem of confidence building measures (CBMs) between Greece and Turkey in the Aegean was again unearthed in early 1997. An initiative has been taken by the United States and NATO which submitted five proposals to the interested parties, namely:

- extension of a moratorium on military exercises in the Aegean from 15 June to 15 September, 1997,
- monitoring by NATO of Greek and Turkish military flights over the Aegean,
- disarming of military aircraft taking part in training flights,
- the use of the IFF/SIF electronic system for identification of aircraft in order to avoid engagements and
- the setting up of a center for direct communication between Greece and Turkey.²²³

221. *ANA, Daily Bulletin*, 30 April 1997, statement by Foreign Minister Theodoros Pangalos.

222. EU-Turkey Association Council, 30 April 1997.

223. Announcement by U.S. Pentagon Spokesman Ken Bacon, 15 May 1997; see also statement by U.S. State Department Spokesman Nicholas Burns, 19 May 1997.

Both countries have accepted the proposal for the monitoring by NATO of Greek and Turkish military flights over the Aegean. Thus, on 6 February 1997, Greece and Turkey started sending, on a four-month trial basis, a Reconnaissance Aircraft Projector (RAP) image of activity in the Aegean to NATO headquarters in Naples, in order to confirm and prove the extent and frequency of violations over Aegean airspace. Greece also accepted the proposal for the extension of the moratorium on military exercises in the Aegean, which has been rejected by Turkey.

The other three proposals were not accepted by Athens. More specifically, the disarming of Greek military aircraft flying over the Aegean was considered as out of the question for Greece to discuss. As the Greek minister of defense explained, although there were instances when Greek aircraft flying in national airspace were not armed, when someone had not submitted a flight plan, Greece was obliged by international treaties, the ICAO rules and its NATO obligations to carry out those missions which concerned the security of air navigation in the Aegean in the way imposed by regulations.²²⁴ A few months later, Greek Government Spokesman Dimitris Reppas revealed that training flights over the Aegean would not be armed, while, in all other respects, flights would be in accordance with regulations in force.²²⁵

The other two requirements concerning the use of the electronic system for identification of aircraft and the setting up of a center for direct communication between Greece and Turkey were dismissed on the grounds that they disputed Greece's responsibility for the Athens FIR.²²⁶ According to the Greek defense minister, ICAO guidelines require all aircraft, including Turkish military aircraft, to lodge their flight plans and their nationality when they want to pass through the international airspace in the Aegean.²²⁷ Moreover, NATO use of the IFF/SIF electronic system was not considered as providing a solution since the "problem is not the identity of the aircraft but their attitude."²²⁸

224. Statement of Greek Defense Minister Akis Tzochatzopoulos, 17 May 1997.

225. ANA, *Daily Bulletin*, 3 July 1997.

226. ANA, *Daily Bulletin*, 17 May 1997, statement by Foreign Minister Theodoros Pangalos.

227. ANA, *Daily Bulletin*, 25 June 1997, statement of Greek National Defense Minister Akis Tzochatzopoulos, Washington.

228. ANA, *Daily Bulletin*, 2 July 1997.

Ankara's unwillingness to accept a summer extension of the moratorium on military exercises in the Aegean created more tension between the two countries during the summer of 1997, when it was announced that the Turkish navy and air force "will carry out routine training and reconnaissance activities in the Aegean between 1 July and 15 August but there will be no manoeuvres during the period."²²⁹ Greece accused Turkey of "backtracking" on the commitment which the two countries had made in the 1988 Papoulias-Yilmaz agreements, a commitment which was confirmed through the NATO secretary general in June 1996 regarding abstention from exercises. This mutual commitment included all of July and August. However, Greece found some positive elements in Ankara's proposal, specifically that Turkish aircraft were not going to be armed when flying over the Aegean and that Turkey had stated that it would respect international regulations. Greece also announced that it would observe in full the two-month commitment in accordance with the agreement which had been signed in 1988 and it stressed that it insisted on its proposal for a three-month moratorium.²³⁰ When on 15 August 1997 Turkey announced its decision to end the military exercise moratorium in the Aegean, the Greek Foreign Ministry issued an announcement saying that although Greece was forced to note this unilateral action, it had respected the moratorium and would continue to fulfill its obligations.²³¹

(b) The Committee of Experts

In the meantime, important steps towards finding processes for resolving problems in Greek-Turkish relations were taken in the political field. Hans van Mierlo, who was the president of the EU Council of Ministers and the Dutch foreign minister, proposed the establishment of a "Committee of Wise Men" to resolve Greek-Turkish differences. Turkey accepted in principle as positive the idea of the creation of this committee since it had often expressed its preference for procedures on a political level and had dismissed the possibility of appearing before the ICJ.²³² Greece, on the contrary, was not very enthusiastic about the idea since it believed that it had no prospects for suc-

229. *Reuters*, Istanbul, 2 July 1997, statement of the Turkish military headquarters, 1 July 1997.

230. *ANA, Daily Bulletin*, 2 July 1997: see *supra* pp. 261-262, 264-265.

231. *ANA, Daily Bulletin*, 21 August 1997.

232. *TDN*, 3 April 1997, statement by Turkish Foreign Ministry Spokesman Omer Akbel.

cess. The Greek foreign minister had set three conditions for rapprochement between the two countries, asking Turkey to declare that it retracted its threat of war, recognized the institutional framework which determined the borders between the two countries and accepted international mechanisms of jurisdiction for the settlement of problems.²³³

The opportunity for the Dutch European Union presidency to mediate and have views exchanged between Greece and Turkey was given in April 1997 in the Maltese capital on the sidelines of the Euro-Mediterranean Conference when Greek Alternate Foreign Minister George Papandreou met his Turkish counterpart Onur Oymen. After this meeting, Greece clarified that the three conditions for rapprochement between Athens and Ankara set by Foreign Minister Theodoros Pangalos did not constitute prerequisites for the formation of the committee.²³⁴

The acceptance in principle of the creation of the committee did not end the problems. Ankara wanted the committee to be composed of foreign members,²³⁵ while Athens had counterproposed the creation of two groups composed of representatives of the two countries, who were to present the arguments of each side and comment on the arguments of the other side.²³⁶ Finally, both countries agreed to the appointment of non-governmental individuals.

Greece and Turkey have agreed to appoint two personalities each, non-governmental and not necessarily nationals of the two countries. They will be asked jointly to consider the positions and submissions of both governments. The personalities should make a common report, if necessary of an interim nature, by mid-June, to the two governments with procedural non-binding and balanced recommendations for dealing with the issues.²³⁷

Greece named Krateros Ioannou and Argyris Fatouros, professors of international law, as members of the Greek group of experts, whereas Turkey

233. See *inter alia* ANA, *Daily Bulletin*, 18 April 1997.

234. ANA, *Daily Bulletin*, 18 April 1997, statement by Greek Government Spokesman Dimitris Reppas.

235. TDN, 7 April 1997.

236. ANA, *Daily Bulletin*, 18 April 1997, statement by Foreign Minister Theodoros Pangalos.

237. ANA, *Daily Bulletin*, 30 April 1997.

named Ali Suat Bilge, professor of international law, and Sukru Elegdag, a diplomat and former foreign ministry general secretary.²³⁸

The two teams of experts were to convey their views in writing to the Dutch presidency which, after studying the respective texts, would note the points on which views converged. From the wording of the statement, it is clear that the framework within which the committee was to operate was very specific and limited. Despite Turkish efforts which aimed at an open dialogue on all problems and differences between the countries,²³⁹ Greece managed to rule out any possibility that the committee would have a substantive discussion on any issue.

The reason was that Athens was careful not to indirectly recognize, through the operation of the committee, all the problems and claims put forward by Turkey against Greece. Greek officials stressed emphatically that the task of the committee was to explore procedures for the settlement of issues and that "no problem was to be recorded and consequently recognized as such, unless there is agreement between the two sides."²⁴⁰ Thus, according to Greece, the issue of the uninhabited Aegean islands, the status of which was questioned by Turkey, concerned "respect for international law and sovereign rights which not only do not constitute a subject for discussion in substance but not even the subject of discussion within any procedural context."²⁴¹

The divergence of views and positions between the two countries and their different aims were reflected in the texts prepared by the Greek and Turkish experts. The Greek texts referred to the use of the ICJ and respect for international law and international treaties. The Turkish texts referred to direct dialogue on the substance of all differences.²⁴²

Despite the creation of the committee, Greece continued saying that an improvement in Greek-Turkish relations depended on the acceptance by Turkey of the three preconditions and terms set by Athens concerning rejection

238. ANA, *Daily Bulletin*, 6 May 1997.

239. See interview with Turkish President Suleyman Demirel, on Greek TV Channel Antena, where he reiterated the position that "we must discuss all this," 23 May 1997.

240. ANA, *Daily Bulletin*, 24 April 1997, statement by Foreign Minister Theodoros Pangalos.

241. ANA, *Daily Bulletin*, 18 April 1997, statement by Greek Government Spokesman Dimitris Reppas.

242. ANA, *Daily Bulletin*, 6 June 1997, statement by Greek Government Spokesman Dimitris Reppas; see also ANA, *Daily Bulletin*, 1 July 1997.

of the threat and use of force, respect for international law and international treaties and recourse to the ICJ for the settlement of any bilateral differences. A halt to threatening Greek sovereignty in the Aegean was of extreme importance to Athens. For this reason, the Greek defense minister warned Turkey that its "pursuit to revise the status quo in the Aegean could become a boomerang and open the Pandora's box for a revision of the international status quo of the Turkish straits—not necessarily by Greece."²⁴³

Turkey, on the other hand, stated that both countries

- should respect and observe the stipulations of the Lausanne Treaty,
- should observe other relevant treaties and agreements signed and duly ratified and registered by the two countries,
- should observe the status quo in the Aegean Sea and should refrain from any action which might create *faits accomplis* and change the status quo in the Aegean,
- should resume the talks started in the late 1970s between the under-secretaries of the two countries, with a view to explore the possibilities of achieving an agreement on the continental shelf and other Aegean problems and
- should also support the efforts of the secretary general of NATO with a view to implementing comprehensive confidence building arrangements.²⁴⁴

7. THE MADRID STATEMENT

On 8 July 1997, during a meeting at the NATO summit hosted by Secretary of State Madeleine Albright, the Greek and Turkish foreign ministers reached "a convergence of views on a basis for promoting better relations."²⁴⁵ After the meeting, Turkish President Suleyman Demirel and Prime Minister Costas Simitis also met in Madrid, and they have issued a statement reaffirming their agreement. According to the statement:

243. *Ta Nea*, Athens newspaper, interview of the Defence Minister Akis Tzochatzopoulos, 27 May 1997.

244. Statement by Turkish Deputy Foreign Minister Onur Oymen, 26 May 1997.

245. Statement by James Foley, U.S. State Department deputy spokesman, 8 July 1997.

His Excellency Suleyman Demirel, President of the Turkish Republic and His Excellency Costas Simitis, Prime Minister of the Hellenic Republic, met on July 8 on the occasion of the NATO summit in Madrid. They noted with satisfaction the convergence of views reached by Foreign Minister Theodoros Pangalos and Foreign Minister İsmail Cem at the meeting hosted by U.S. Secretary of State Albright. Both countries will pursue efforts to promote bilateral relations based upon:

- A mutual commitment to peace, security and the continuing development of good neighbourly relations;
- Respect for each other's sovereignty;
- Respect for the Principles of International Law and International Agreements;
- Respect for each other's legitimate, vital interests and concerns in the Aegean which are of great importance for their security and national sovereignty;
- Commitment to refrain from unilateral acts on the basis of mutual respect and willingness to avoid conflicts arising from misunderstanding; and
- Commitment to settle disputes by peaceful means based on mutual consent and without use of force or threat of force."²⁴⁶

The statement was undoubtedly a significant step for both Greece and Turkey. The initiative belonged to the U.S. State Department, and the fact that the two leaders specifically mentioned the name of the U.S. Secretary of State Albright is not without significance.

(a) Interpretation of the Text

The legal significance of the Madrid Statement can be described as controversial. It was issued by the Turkish president and the Greek prime minister directly to the press during a press conference held at the conclusion of their meeting. From what is known, the text did not bear any signatures or initials. In fact, the statement recorded the decision of the two leaders to pursue efforts to promote bilateral relations in a specific manner. Nevertheless, it

246. For the text of the statement, see The United States Information Agency (USIA) at <http://www.usia.gov>.

is difficult to say that the failure of either of the two states to fulfill its commitments could have any legal implications.²⁴⁷

Apart from its uncertain legal significance, the statement introduced new elements which can shape a framework for the development of Greek-Turkish relations. The only exceptions were the first two commitments of the leaders, namely, the commitment to peace, security and the development of good relations and the respect for each other's sovereignty. These two commitments, which do not affect practically the relations of the two countries, can be described as self-evident. Nevertheless, it has to be noted that the second commitment, the respect for sovereignty, is usually accompanied in diplomatic practice by the phrase "respect for the territorial integrity of the two countries." The omission of this phrase can be considered as a reminder that Turkey does not recognize the present boundaries between the two countries.

Although, in principle, all the other commitments in the statement applied equally to both countries, it is evident that they did not have the same value. Thus, the most important commitments on Turkey's behalf were respect for the principles of international law and international agreements and the settlement of disputes by peaceful means without use of force or threat of force.

Respect for international law is more or less self-evident in today's world. On the other hand, Turkey always repeated at various levels that the differences between the two countries were political and dismissed any mention of the rules of international law. Although the reference to international law and agreements in the statement does not constitute acceptance that international law will be the basis on which solutions to Greek-Turkish problems should be sought, it nevertheless implies that it has some role to play.

The same applies to the threat or use of force. Although it is prohibited by Article 2.4 of the U.N. Charter which stipulates that all U.N. members refrain "from the threat or use of force against the territorial integrity or political independence of any state," Turkey has often declared at various levels its readiness to use force against Greece if the latter were to exercise its right to extend its territorial waters. The *casus belli* threat has also been repeated in the 9 June 1995 Resolution of the Turkish Grand National Assembly. The re-

247. See relevant problem faced by the ICJ in connection with the 1975 Brussels Communiqué between Constantine Karamanlis and Suleyman Demirel, *Aegean Sea*, 1978, par.108; see also *supra*, pp. 135-136.

nunciation of the use of force was a significant transformation in Turkish foreign policy.

Greece, on the other hand, seemed accept two basic elements. The first concerned respect for the "legitimate, vital interests and concerns" of each country in the Aegean. Of course, it is self-evident that since both countries have coasts in the Aegean they must have vital interests in the area. The acceptance, however, of a phrase which can only be explained in politics and not in law and which is moreover connected with the notions of security and national sovereignty constituted an important retreat from the traditional Greek approach to the Aegean dispute, which was viewed as a purely legal one.

The second element concerned the refraining from unilateral acts in the Aegean. This was quite a controversial point. The Greek view was that it applied only in cases such as the Imia/Kardak event because the statement specifically mentioned that the goal was to avoid conflicts arising from misunderstanding, which was the case in the January 1996 incident. According to the Turkish view, this applied in all cases of unilateral acts including any extension of the Greek territorial waters. This point probably explains Turkey's renunciation of the use of force. This threat was used exclusively in relation to the possible extension of the Greek territorial waters. Since Greece accepted that it would refrain from unilateral acts, according to the Turkish interpretation, there was no more reason for the persistence of the threat.

In general, the language used in the statement offers grounds for various interpretations of the exact meaning of the text. Nevertheless, it has to be mentioned that Turkey committed itself to certain basic principles of international law, which it had not accepted until then. Greece accepted a wording with a political meaning, not a legal meaning. Finally, it has to be mentioned that the statement did not state that the differences between the two countries were to be solved according to international law and there was no reference to the ICJ or any other judicial organ.

(b) The Post-Madrid Policy

The Madrid Statement did not constitute a solution to the problems that existed between the two countries. It was simply a step towards shaping a framework in which solutions to Greek-Turkish problems were to be sought. Therefore, further efforts were necessary to see how both sides were to implement in practice all that had been agreed upon. The day after the Madrid

Statement was issued, Turkish warplanes infringed upon the Athens FIR and violated the Greek national airspace. This situation continued until the end of July 1997 and resulted in the submission of a memorandum by the Greek government to the United States setting out in detail all the violations which took place after the statement.

U.N. sponsored direct talks on the Cyprus issue between Cypriot President Glafkos Clerides and Turkish Cypriot Leader Rauf Denktash have also played a crucial role in the entire climate of Greek-Turkish relations. Five days before the second round of these talks, Turkey and the Turkish Cypriot illegal regime signed an agreement calling for an association council to work towards the partial economic and defense integration of Turkey with the occupied northern part of the island.²⁴⁸ The Greek Foreign Ministry strongly condemned the agreement as well as the fact that Turkey chose to sign it during a period "when efforts by the international community are being made towards normalizing Greek-Turkish relations on the basis of international law and conventions."²⁴⁹ Finally, after five days of negotiations, the second round of the Cyprus talks ended in deadlock.²⁵⁰

The various statements made by Turkish officials constituted another factor that played a significant role. The Turkish Deputy Prime Minister Bulent Ecevit, for example, rejected as ridiculous the possibility that Turkey would have recourse to the ICJ over the status of Imia/Kardak and at the same time, he refused to drop the Turkish claim over the two islets.²⁵¹ The Greek government tried initially to undermine these statements by considering that they were coming from these forces within Turkey which were not in favor of a Greek-Turkish rapprochement. The situation changed dramatically after Turkish Prime Minister Mesut Yilmaz's interview with the U.S. daily, *The Washington Post*, in which he expressed the view that the Aegean Sea is a special case where international law is not valid.²⁵² This view was considered by the Greek government as totally inconsistent with the Madrid Statement. A few days later, Greek Foreign Minister Theodoros Pangalos denounced Turkish post-Madrid policy and stated that, although Greece had no reason to

248. The text was published on the World Wide Web site of the Turkish Foreign Ministry (www.mfa.gov.tr.Grupfi/KKTC/htm).

249. Official Statement of the Greek Ministry of Foreign Affairs, 7 August 1997.

250. *ANA, Daily Bulletin*, 19 August 1997.

251. *Hurriyet*, Istanbul newspaper, 18 August 1997.

252. *Washington Post*, 3 August 1997.

deviate from its policy, questions regarding the continuation of contacts between the two countries were inevitably raised.²⁵³

All the signs indicated that some months after the Madrid Statement the relations between the two countries in the Aegean returned back to normal, the "normal" being a state of mutual suspicion and distrust. Both countries were once more viewing each other through the prism of their traditional enmity.

253. *To Vima*, Athens newspaper, 31 August 1997.

11. Title and Rights over the Aegean Islands

INTRODUCTION

Occupation as a mode of acquiring sovereignty over territories which are not at the time under the sovereignty of another state has become more important in recent years due to the fact that, according to the LOSC, islets may command relatively large maritime areas of continental shelf and EEZ. Therefore, much attention has been focused on the existence of remote islets or rocks in oceans or very large seas, the most famous examples being the uninhabited Rockall rock in the North Atlantic¹ and the Nansha or Spratly islands in the China Sea.² In these areas, the existence of *terrae nullius* is possible for geographical and practical reasons.

On the other hand, the Aegean Sea has attracted the interest of geographers and cartographers for more than 2,000 years. Moreover, the Aegean in no way resembles the size of the South China Sea or the Atlantic Ocean. Its complicated history and the fact that the Aegean islands constituted for centuries the apple of discord among numerous people make it hardly possible to say that there exist in the Aegean *terrae nullius* which waited until 1996 for someone to discover, occupy and acquire sovereignty over. Nonetheless, there can exist territories, the sovereignty over which is merely unclear or disputed. These territories cannot be regarded as *terrae nullius* because there can be no question of a third state acquiring them by occupation. Therefore, the examination of the legal arguments of the two parties has to start from the basic treaties which established the legal regime of the Aegean Sea and, consequently, the status of these territories which can be described either as *terrae nullius* or areas of disputed sovereignty.

1. THE LAUSANNE TREATY AND THE "GRAY AREAS" OF THE AEGEAN

The 1923 Lausanne Peace Treaty is rightly considered as the cornerstone of the legal status quo in the Aegean. As it concerns the two countries

1. See *inter alia*, Symmons, *Marine Policy Reports*, 1986.

2. See *The Times* (London newspaper), 6 February 1974.

of the Aegean, this treaty symbolized the end of the vanquished Ottoman Empire which had crumbled, as well as the burning wreck of the Greek *Megali Idea*. From a legal point of view, the Lausanne Treaty was a peace settlement which set/reconfirmed the limits of Turkey towards its neighbors. This settlement took the form of a treaty between several states including the ceding and the cessionary state.³ What is in dispute between Greece and Turkey is the extent of this cession. Greece claims that the 1923 Treaty of Lausanne limits Turkish sovereignty only over islands lying within a three-mile zone from the Turkish coast. According to Turkey, this treaty does not rule on Turkish rights on islets and rocks and foresees the settlement of their future by the parties.

If a dispute arises as to the sovereignty over a territory, "it is customary to examine which of the states claiming sovereignty possesses a title—cession, conquest, occupation, etc.—superior to that which the other state might possibly bring forward against it."⁴ Therefore, the legal title of the two parties over the islands of the Aegean has to be examined. The northern and eastern Aegean islands and the Dodecanese group belonged before 1912 to the Ottoman Empire. During the first Balkan War, the Aegean islands, with the exception of the Dodecanese group, were occupied by the Greek navy. The Dodecanese islands passed under Italian occupation, with the exception of the island of Kastellorizo which was self-governed for one year, in 1914 became a naval base for the French navy and in 1920 was offered to the Italians.

(a) The Islands Placed under Greek Sovereignty in 1914-1923

(i) *The 1914 Decision of the Six Powers.* As has been seen in an earlier chapter,⁵ Article 12 of the Lausanne Treaty provided that certain islands were placed under the sovereignty of Greece, whereas Article 15 placed other islands under the sovereignty of Italy. The islands of Article 12 were collectively named the "islands of the Eastern Mediterranean" other than the islands of Imbros, Tenedos and the Rabbit islands. These were specified "particularly" as the islands of Lemnos, Samothrace, Mytilene (Lesbos), Chios, Samos and Ikaria, "subject to the provisions of the present Treaty respecting the islands placed under the sovereignty of Italy which form the subject of Article 15."

3. See Oppenheim, pp.680-1.

4. *Island of Palmas* arbitration, 1928, RIAA, Vol. 2, p.845.

5. See *supra*, pp.37-43.

The Turkish argument that there is no mention of islets and rocks in relation to the islands placed under Greek sovereignty is true, since Article 12 *per se* does not make any such reference. However, it is expressly stated that Article 12 confirmed the Greek cession on the decision taken "on 13 February, 1914, by the Conference of London, in virtue of Articles 5 of the Treaty of London of 17/30 May, 1913, and 15 of the Treaty of Athens of 1/14 November, 1913" which was communicated to the Greek government on 13 February 1914. The importance of the 1914 Decision is shown by the fact that Protocol XII which was attached to the Treaty of Lausanne drew in Article 9 a distinction between the territories detached from Turkey under this Treaty and the territories which had been detached from that country after the Balkan Wars. The date of the detachment of these territories was fixed to be 29 October 1914.⁶ Therefore, the February 1914 Decision is a critical document which has to be examined carefully.

Despite the Turkish claim that the February 1914 Decision named "one by one, the islands whose sovereignty is thereby transferred to Greece,"⁷ there was no reference to any names of islands in that Decision. On the contrary, according to the 1914 Decision, the Six Powers decided to transfer to Greece "toutes les îles de la mer Egée actuellement occupées par elle, à l'exception de Tenedos, d'Imbros et de Kastellorizo" [all the islands of the Aegean Sea actually occupied by her, with the exception of Tenedos, Imbros and Kastellorizo].⁸ Therefore, the decision on which the cession of the islands to Greece is based, according to the Lausanne Treaty, speaks generally of all the Aegean islands occupied by the Greek army. Moreover, it is important to note that not only the February 1914 Decision spoke in general about all the Aegean islands. Article 5 of the Treaty of London of 17/30 May 1913, which is also mentioned in Article 12 of the Lausanne Treaty, used the same expression, "toutes les îles ottomanes de la mer Egée" [all the Ottoman islands of the Aegean Sea].⁹ Article 15 of the Treaty of Athens of 1/14 November 1913

6. See also the *Lighthouses* case, (France/Greece), *PCIJ Series A/B*, No. 62, 1934, p.10.

7. "Legal Backgrounder on the Kardak Crisis in a Nutshell: Etiology of a Package Approach," published on the World Wide Web site of the Turkish Foreign Ministry (<http://www.mfa.gov.tr/grupf/kardak/kardak15.htm>).

8. *CTS*, 219, p.287.

9. For more, see Kondis, in *Greece and Great Britain During World War I*, p.49ff.

did not refer to the Aegean islands but simply mentioned Article 5 of the 1913 Treaty of London.¹⁰

(ii) *Islands, islets and Rocks in International Law*. At this point, it may be argued that the 1914 Decision speaks only about islands and there is still no reference to islets and rocks. The 1914 Decision and the 1923 peace treaty must however be interpreted subject to the conditions and rules in existence at the time that the problem was made. Therefore, the legal views of that period concerning islands, islets and rocks have also to be examined. In the "Bases of Discussion" prepared in 1929 by the Preparatory Committee of the 1930 Hague Conference, all the insular formations were included without distinctions in the generic description of the "offshore features which are permanently dry."¹¹ A year later, the Sub-Committee II of the Hague Conference described the island as an "area of land surrounded by water, which is permanently above high water mark."¹² The first time that the size of the island was introduced in the international law of the sea was done by Malta only in 1973 and it was unsuccessful.¹³ Even today, the LOSC describes as islands "all the naturally formed areas of land which are surrounded by water and they are above water at high tide."¹⁴ There is no distinction between insular formations according to their size.¹⁵ Therefore, it can be concluded that traditionally international law has considered even miniscule insular formations as islands and that the 1914 Decision by the term "*toutes les îles de la mer Egée*" [all the islands of the Aegean Sea] included all the islands, islets and rocks which were occupied by Greece.

(iii) "*Les îles occupées*." The next question is what is meant by occupation in the 1914 Decision. Occupation in international law of peace is commonly related to extension of sovereignty over *terra nullius*.¹⁶ The word occupation in the case of the Aegean islands and the 1914 Decision has to be con-

10. Treaty of Peace between Greece and Turkey, Athens, 1/14 November 1913, Strupp, p.232.

11. League of Nations Documents, C.74 (a), M. 39 (a), 1929, V.9, p.109, see *supra* pp. 60-62.

12. Report on the Second Commission, art. 2, C 230, M 117 1930, V. p.13. See also *supra*, pp.60-62.

13. See U.N. Doc. A/AC.138/SC.II/L.28; also Oda, 1972, Vol. II, p.266.

14. LOSC. Article 121.1; see *supra* pp. 203-204

15. The question of what maritime zones an insular formation can generate is a different matter from what constitutes an island.

16. Oppenheim, 1992, pp.686-687.

sidered in the light of the international law concerning warfare on land. Thus, according to Article 42 of the Hague Regulations on the Laws of War, a territory is considered occupied "when it is actually placed under the authority of the hostile army,"¹⁷ or, according to another interpretation, occupation is constituted by invasion and the "taking possession of enemy territory for the purpose of holding it, at any rate temporarily."¹⁸ This occupation took place in a period when "the making of war was recognized as a sovereign right and war was not illegal."¹⁹

Therefore, it is evident that the 1914 Decision did not limit the Greek sovereignty on the islands specifically named in Article 12 of the Lausanne Treaty since the Greek navy placed under its authority or took in its possession or in other words, physically occupied during the Balkan Wars the islands of Agios Eustratios, Fournoi, Oinoussai and Psara, to mention only four of the ten islands which were inhabited at the time of the conclusion of the Lausanne Treaty, and they were not *expressis verbis* included in Article 12. These ten islands were inhabited by a population of more than 5,500 people.²⁰ The Greek forces also physically occupied the islets on which lighthouses were installed.²¹ This is evidenced by the PCIJ which declared in 1934 that the "territories" on which lighthouses were situated "have now become Greek."²² These two facts render the Turkish argument concerning the cession only of the islands which were named one by one in Article 12 erroneous.

(iv) *An Island as Part of a Larger Geographical Unit.* At this point, it may rightly be asked what the status of the islets and rocks is which were not physically occupied by the Greek forces for obvious reasons since they were neither large areas of habitable terrain nor places of strategic interest, and no

17. Hague Convention IV Respecting the Laws and Customs of War on Land.

18. Oppenheim, *War*, 1955, p.434.

19. Oppenheim, 1992, pp.698-699; see also Brownlie, 1963, p. 217; article 10 of the League of Nations Covenant.

20. These islands are: Agios Eustratios, Fournoi, Oinoussai, Psara, Thymaina, Samiopoula, Megalonisi, Agios Minas, Antipsara and Passas. Despite the "urbanism" of the Greek population to the big towns during the last thirty years, they are still inhabited by more than 3,000 people.

21. See *inter alia* the December 1914 Decision of the Greek government concerning the "maintenance of the lighthouses situated in the zone of the new Greek territories," *Lighthouses* case, p.11.

22. *Lighthouses* case, p.18.

lighthouses were erected on them. Their total number amounts to 440 islands, islets and rocks which belong to the islands mentioned specifically in Article 12 of the Lausanne Treaty, as well as to the other inhabited islands physically occupied by the Greek army according to the 1914 Decision.²³ The answer to this question has to be founded

on certain logical and equitable principles which are not roots of title but are of importance in determining the actual extent of sovereignty derived from some orthodox source of title such as a treaty of cession or effective occupation.²⁴

In 1933, the PCIJ accepted that the activity that was somewhat localized in other parts of Greenland gave title to Denmark over the whole of Greenland. The reasoning of the Court gave, in fact, effect to principles of geographical unity and accepted that "the occupation may be little more than symbolic."²⁵ The *Clipperton Island* arbitration was based on the same principles.²⁶ Thus, in cases where geographical factors are relevant "state activity may not press uniformly on every part of territory."²⁷ Directly connected with this notion "is the presumption of peripheral possession based on state activity"²⁸ which follows the principle that "the secondary follows the dominant."²⁹ As Judge Huber stated "as regards groups of islands, it is possible that a group may under certain conditions be regarded as in law a unit and that the fate of the principal part may involve the rest."³⁰ According to this

where an island can properly be regarded as part of a larger geographical unit it may be sufficient for a State to demonstrate its sovereignty in relation to the unit as a whole, even though no particular act of sovereignty has been manifested on the individual island.³¹

This notion is not connected with title based on contiguity. The use of the geographical factors does not give a primary title but it is used for the determination of "le degré souhaitable d'effectivité de l'occupation" [the de-

23. Yangakis, 1995, p.69.

24. Brownlie, 1992, p.149.

25. Shaw, 1991, p.296; *South-Eastern Greenland Case*, PCIJ, 1933, p.46.

26. *Clipperton Island* arbitration, *ILR*, Vol. 6, p.95.

27. Brownlie, 1992, p.150.

28. *Ibid.*

29. Nguyen, Dailler, Pellet, 1992, p.503.

30. *Island of Palmas* arbitration, 1928, *RIAA*, Vol. 2, p.855.

31. Bowett, 1979, p.53.

sired degree for the effectiveness of the occupation].³² All that is at issue is that, if the island is within the geographical limits of a territory taken as a whole, "then the effectiveness of possession will be measured in relation to that whole and not in relation to any part of it."³³

In the *Minquiers and Ecrehos* case, Judge Carneiro gave the following description of the elements which have to be taken into consideration as it regards the occupation of islets and rocks in a case of a group of islands:

The occupation of the principal islands of an archipelago must also be deemed to include the occupation of islets and rocks in the same archipelago, which have not been actually occupied by another State.³⁴

It is obvious that this description is relevant to the Aegean islands as well. The word archipelago is used in this passage in accordance with its geographical meaning, "a group of islands," and not in conformity with what has been described as a legal archipelago in the LOSC. Therefore, the extent of the Greek sovereignty over the Aegean islands is determined according to these logical and equitable principles which are subsidiary to the root of title deriving from the 1914 Decision. The Greek navy controlled in 1914 the central and northern Aegean. This control was indisputable, whereas at the same time it is logical that there was no reason for the Greek navy to land and physically occupy tiny territories. The whole area has to be considered as a geographical unity where the large, inhabited Aegean islands are taken together with the miniscule insular formations scattered around them.

At this point, the PCIJ decision on the *Lighthouses* case has to be mentioned. Although the Court had not been asked in that case to specify which territories were detached from Turkey and assigned to Greece after the Balkan Wars,³⁵ it is important to see how the Court described the transfer of the sovereignty over the Aegean islands in 1914. Thus, according to the Court's judgment, the 1913 Treaty of London

left to the Powers *inter alia* the decision as to the disposal of the Ottoman islands in the Aegean with the exception of Crete. In February

32. Nguyen, Dailler, Pellet, 1992, p.503.

33. Bowett, 1979, p.53.

34. *Minquiers and Ecrehos*, (France/United Kingdom), ICJ Reports, 1953; Individual Opinion Levi Carneiro, p.99.

35. *Lighthouses* case, p.28. See also similar problem in the *Lighthouses in Crete and Samos*, (France v. Greece), PCIJ Series A/B, No. 71, 1937, p. 98.

1914, the Powers assigned these islands with the exception of three (Imbros, Tenedos and Kastellorizo) to Greece.³⁶

This view is confirmed by the Legal Expert of the Turkish Ministry of Foreign Affairs who wrote in 1988 that, during the Balkan Wars, Greece "occupe les îles Egéennes orientales du nord et du centre de la mer Egée" [occupied the eastern Aegean islands in the north and in the center of the Aegean Sea] and the Six Powers "décident en février 1914 de laisser la Grèce en possession des autres îles, à l'exception d'Imbros et de Tenedos" [decided in February 1914 to leave Greece in possession of the other islands with the exception of Imbros and Tenedos].³⁷ According to the same expert, Article 12 did not limit the Greek sovereignty over the islands specifically named one by one in this Article since "par l'Article 12 du traité de paix de Lausanne, la décision de 1914 des six puissances est réaffirmée en ce qui concerne les îles laissées à la souveraineté grecque" [according to Article 12 of the Lausanne Peace Treaty, the Decision of the Six Powers was reaffirmed as it regards the islands left under Greek sovereignty].³⁸ As has been described, the impression of the territorial settlement of the Lausanne Treaty was that, in effect, "the Turkish boundary was to be the coast of the mainland (save for those three islands) [Imbros, Tenedos and Rabbit islands] and, territorially, the Aegean was to be Greek."³⁹

After this examination of the root of Greek title to sovereignty, which was considered lawful as it was when the relevant factors arose, the following can be concluded: according to Article 12 of the Lausanne Treaty, Greek sovereignty was extended not only to the islands specifically named one by one, but moreover to all the islands occupied by Greece at the time of the 1914 Decision of the Six Powers. The term "islands" includes all the insular formations irrelevant of their size. The Greek occupation covered the whole area of the central and northern Aegean as a geographical unity over which Greek control was indisputable. Therefore, the Greek sovereignty covers all the islands, islets and rocks apart from the exceptions specifically mentioned in Article 12.

36. *Lighthouses case*, p.9.

37. Pazarcı, *Le différend Gréco-Turc*, 1988, pp.101-102.

38. Pazarcı, *Le différend Gréco-Turc*, 1988, pp.102.

39. Bowett, 1979, p.251.

(b) *The Islands Placed under Italian Sovereignty*

Under Article 15 of the Lausanne Treaty, Turkey renounced in favor of Italy "all rights and title" to several specifically named islands which belong to the Dodecanese group, to "the islets dependent thereon," as well as over the island of Kastellorizo. The transfer of sovereignty over the Dodecanese islands by Turkey to Italy constitutes the typical example of the cession of territory by the owner state to another state within the framework of a peace treaty.⁴⁰ Especially in the case of the Dodecanese islands, the transfer of sovereignty can be more properly classified as a renunciation because the grantee state was already in occupation of the above-mentioned territories.⁴¹

Unlike Article 12, which also speaks about territories detached from Turkey, Article 15 referred to islets dependent on the islands specifically mentioned one by one. The question is why the term "islets" is used whereas, as has been seen earlier, international law accepts all naturally formed insular formations as islands irrespective of their size. The answer to this question derives from facts of political history and geography related to the Dodecanese islands.

An important difference between Article 12 and Article 15 of the Lausanne Treaty is that the earlier Article confirmed an older decision which transferred territories, whereas the later Article constituted *per se* the basis of the title for the territorial cession of the Dodecanese islands. These islands, although they were detached from Turkey in 1912,⁴² were not officially ceded to Italy until 1923. Italy occupied but did not own them during the period between 1912-1923. In 1915, the Secret Treaty of London was signed between the Allied and Associated Powers and Italy, which offered to the latter the "full possession" of the Dodecanese islands.⁴³ This treaty was never given effect due to the fact that, upon the insistence of the U.S., secret treaties were not recognized after the First World War. The 1920 Treaty of Sevres provided that "Turkey renounce in favor of Italy all rights and titles" over the Dodecanese islands.⁴⁴ The Treaty of Sevres was never ratified and therefore its provisions concerning the Dodecanese islands were never carried out. There-

40. See Oppenheim, 1992, p. 679-686; Shaw, 285-286.

41. See Brownlie, 1990, p.133, fn.39.

42. See Bosworth, *The Historical Journal*, 1970, pp. 683-705.

43. Art.8 of Secret Treaty of London, in Albrecht-Carrie, *Italy at the Peace Conference*, pp.334-339.

44. *BFSP*, 113, 1920, p.492, art.122.

fore, until the Treaty of Lausanne, the sovereignty over the Dodecanese islands remained with the Turkish government, and its inhabitants were Ottoman subjects.⁴⁵

Since the Treaty of Lausanne conferred the title to the new territories acquired by Italy, it can be expected that it had to be more detailed in comparison with Article 12 which confirmed an already existing legal situation. Far more important, however, seemed to be the elements of geography. More specifically, the area of the Dodecanese islands, in spite of its name which means twelve islands, is comprised of a total number of 1,120 insular formations. Among them, there were thirty-one inhabited islands in 1922 and 127 islands which have a considerable size.⁴⁶ The proximity of the Dodecanese islands to the Anatolian coasts is more than evident since there are many islands which are embraced by Turkish peninsulas. This geographic reality in no way resembles the case of the other Aegean islands which, with the exception of the island of Samos, were neither in such close proximity with the Turkish coasts to create problems in the identification of the smaller islands adjacent to them, nor was the number of their islets so great. Therefore, the use of the term "dependent islets" was preferred in order to avoid confusion as to the extent of the title over the territories ceded to Italy.

(c) The Turkish Rights in Relation to the Aegean Islands

(i) *Renunciation of Turkish Rights.* In the case that a state renounces title over a territory "in circumstances in which the subject matter does not thereby becomes *terra nullius*," international law speaks about renunciation or relinquishment.⁴⁷ This term best describes the Turkish transfer of rights and title over the islands either ceded to Greece or to Italy. The positions of Greece and Turkey on the extent of this renunciation of rights, however, differ greatly. Greece claims that the Lausanne Treaty limited Turkish sovereignty "with the exception of Imbros, Tenedos and the Rabbit islands—explicitly only over islands lying within a three-mile limit off the Turkish coast."⁴⁸ On the other hand, Turkey insists that there exist in the Aegean Turkish rights over islets and rocks other than those explicitly ascribed to the Anatolian coasts.

45. See Gregoriades, *RHDIP*, 1949, pp. 240-241.

46. Yangakis, *Aigaiopelagitika Themata*, 1987.

47. Brownlie, 1990, p. 136.

48. "Turkish Foreign Policy and Practice as Evidenced by the Recent Turkish Claims to the Imia Rocks," published on the World Wide Web site of the Greek Foreign Ministry (<http://www.mfa.gr>).

The source of the legal dispute between the two countries is found in two passages of the Lausanne Treaty:

Article 12

...Except where a provision to the contrary is contained in the present Treaty, the islands situated at less than three miles from the Asian coast remain under Turkish Sovereignty.

Article 16

Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognized by the said Treaty, the future of these territories and islands being settled or to be settled by the Parties concerned...

The text of the Lausanne Treaty is not ambiguous. Turkey possesses only the islands which are situated within three miles from its coasts and renounces all the rights over the other Aegean islands. The only question is what is the exact meaning of the word "island." As has been seen earlier, at the time the Lausanne Treaty was signed, there was no reason to make a reference to different "types" of insular formations. The effect that an insular formation could have on the extension of maritime zones was still unknown and there was no distinction between insular formations in terms of size or population. Therefore, in the term "islands," the islets and rocks also have to be included. The fact that the term islands includes all the insular formations of every size is better proved by another point. The vast majority of the insular formations which lie at a distance of less than three miles from the Turkish coast cannot be described as islands of a considerable size but rather as islets or rocks. According to the Legal Adviser of the Turkish Ministry of Foreign Affairs, Mr. Husseyin Pazarcı, the Lausanne Treaty left to Turkey "d'une soixantaine d'îles, plutôt de *petite dimension* et placées, à l'exception de quelques-unes, dans les trois milles marins des côtes anatoliennes relevant de la Turquie" [sixty islands, which were more or less of small dimensions and were placed with the exception of some of them within the three nautical miles of the Anatolian coasts which belonged to Turkey].⁴⁹ Thus, it may be implied that Turkey considers that the "gray areas" of sovereignty in the

49. Pazarcı, 1987, p.1 (emphasis added); see also Pazarcı, *Le différend Grèce-Turc*, 1988, p.102. For the dimensions and names of these islands, see Pazarcı, 1986, pp.4-5, fn.17.

Aegean Sea cover islets and rocks claimed by Greece as well as islets and rocks which are situated within the three miles limit from the Turkish coasts.

(ii) "*The Future of these Territories is to be Settled.*" The conclusion is that there do not exist any Turkish rights beyond the three-mile zone adjacent to the Turkish coasts. Nevertheless, there is a serious problem in this interpretation. Article 16 specifically stated that "the future of these territories and islands [were] being settled or [were] to be settled by the Parties concerned." Turkey bases its claim concerning the different status of islets and rocks on this specific point. It claims that Article 16 of the Lausanne Treaty "not only does not make mention of islets and rocks but also foresees the settlement of their future by the Parties."⁵⁰ This remark is very important because it can leave the door open for different interpretations. Therefore, it has to be examined closely.

The answer seems to lie in the problem of the ownership of the Dodecanese islands which remained a source of disturbances between Greece and Italy in the years before the conclusion of the Lausanne Treaty. As has been seen earlier, Italy never acquired *de jure* the Dodecanese islands before 1923, although it had occupied them since 1912. The fact that the population of the islands was predominantly Greek played a significant role in the relations between the two countries. The entrance of Greece into the First World War challenged the Italian claim to the Dodecanese. In 1919, Italy entered into an agreement with Greece which provided in Article 5 that "Italy cedes to Greece the sovereignty over the isles which she occupies in the Aegean. The isle of Rhodes shall remain under Italian sovereignty."⁵¹ A plebiscite was to be held on the island of Rhodes on the day that Great Britain would hand over Cyprus to Greece or otherwise within five years.⁵²

The so-called Tittoni-Venizelos Agreement was subject to the full satisfaction of Italy in its Anatolian expectations. The new Italian foreign minister, Count Sforza, denounced this agreement on these grounds⁵³ a year after its signature and a month before the Treaty of Sevres, which provided in Article 122 the transfer of the Dodecanese islands to Italy. Nevertheless, the intention of the Allied Powers "in introducing this Article was to transfer the title to

50. "Legal Backgrounder on the Kardak Crisis in a Nutshell," *supra*, fn. 7.

51. 29 July 1919, *CTS*, Vol.225, pp.442-445.

52. "Arrangement" signed between Tittoni and Venizelos, in Frangoulis, *Dictionnaire Diplomatique*, Vol.I, p.739.

53. Letter of Count Sforza to the Greek government, 22 July 1920.

Italy in order to legalize the transfer from Italy to Greece" in accordance with the Tittoni-Venizelos Agreement.⁵⁴ On this ground, the U.S. Senate unanimously supported a Resolution asking for the awarding by the Peace Conference "of the Twelve Islands of the Aegean" to Greece.⁵⁵

As a result of the denunciation of the Tittoni-Venizelos Agreement, Greece refused to sign the Treaty of Sevres. Simultaneously, Great Britain strongly opposed the Italian initiative and finally persuaded Italy to enter into a new agreement with Greece which was signed in the presence of the signatory states of the Treaty of Sevres.⁵⁶ According to Article I of the so-called Venizelos-Bonin Agreement, the Dodecanese islands were to be handed over to Greece. On the island of Rhodes, a broad local autonomy was to be accorded until a plebiscite was conducted.⁵⁷ After this agreement, Greece signed, together with the other Allied Powers, the Treaty of Sevres. This treaty was revised in less than a year from its signature in March 1921 and was never ratified or entered in force. During the same period, Italy adopted some administrative measures which showed its intention to fulfill its obligations under the Venizelos-Bonin Agreement. For example, "passports issued to Dodecanesians were designated as invalid 'after the cession of the Islands to Greece'."⁵⁸

After the defeat of the Greek forces in Asia Minor, Italy found the opportunity to denounce the Venizelos-Bonin Agreement due "to the approach of the convocation of the conference which is to settle the Eastern Question on the basis of a new situation."⁵⁹ When, in January 1923, the draft Articles were submitted to the delegations which participated in the Lausanne Conference, Greece submitted a memorandum in relation to the Dodecanese islands:

The Hellenic Delegation has no objection to make against Article 15 of the draft Article, in virtue of which Turkey engages to renounce, in favor of Italy, all her rights and titles in the Dodecanesian islands enumerated in that Article. It considers the procedure followed as just. It would recall, however, that an unratified treaty exists between Italy and Greece

54. Roucek, *AJIL*, 1944, p.702.

55. Res.327, 17 May 1920, *Congressional Record*, Vol.59, Part VII, p. 7160.

56. Roucek, *AJIL*, 1944, p.702.

57. 10 August 1920, in Frangoulis, *La Grèce, son statut international, son histoire diplomatique*, Vol. II, p.109; see also Mavris, 1943, p.11

58. Roucek, *AJIL*, 1944, p.703.

59. Note of the Italian government to the Greek government, 8 October, 1922.

on the question of the definite attribution of these islands and it reserves the right of the Greek government, as soon as Turkey has relinquished her rights on these islands, to engage in amicable conversations necessary for the determination of their future lot. The Hellenic government making this reserve counts on the spirit of justice and equity of all, and above all of the Italian government, to give the question of the islands a solution conformable to the principles of nationalities and to the accords already existing.⁶⁰

No objection or comment was made by the Italian delegates in relation to this memorandum.⁶¹ The submission and the content of this memorandum is the explanation of the expression "being settled or to be settled by the Parties concerned" which is contained in Article 16 of the Lausanne Treaty. According to one commentator who examined this point in 1944

The clause "is settled or to be settled" in Article 16 admits of only one interpretation. The patent meaning is that either a new agreement would be concluded, as requested by the Greek Delegation in their note, and the issue was thus to be settled; or if no new agreement were made, the Treaty of August 10, 1920 [Treaty of Sevres] would remain in effect.⁶²

This view seems to be supported by the fact that less than a year after the conclusion of the Treaty of Lausanne and one month after its ratification by Italy, the British prime minister, speaking in the House of Commons, expressly stated that:

These issues, as the Italian government have often been reminded, embrace the question of the Dodecanese, and the Italian government have for their part recognized that the Treaty which they concluded with Greece on August 10, 1920 [Venizelos-Bonin Agreement] was the result of agreement between the Allies...the inhabitants of these islands ethnologically belong to Greece; and that their continued severance from that country is hardly conducive to that general tranquillity which H.M. government have so much at heart.⁶³

60. Greek Memorandum, 29 January 1923, in Booth, *Italy's Aegean Possessions*, 1928, p.310.

61. See Roucek, *AJIL*, 1944, p.704.

62. Roucek, *AJIL*, 1944, p.704.

63. Great Britain, Parliamentary Debates, House of Commons, Vol. 170, 25 February 1924.

There was no objection raised on behalf of the Italian government regarding this statement.⁶⁴ Nevertheless, the flux existing in the relations between the Allied Powers and the Mussolini government in Italy postponed the settlement of the problem which was mentioned in Article 16 in spite of several Greek efforts made prior to the Second World War.⁶⁵

After this detailed but necessary examination of the history of Article 16, it can be concluded that between 1919 and 1922 Italy and Greece repeatedly expressed their will for the transfer of the Dodecanese islands under Greek sovereignty. It was within this framework that Article 16 provided that "the future of these territories and islands [was] being settled or [was] to be settled by the Parties concerned." The parties concerned were exclusively Italy and Greece since Turkey had renounced all its rights over the islands lying more than three miles from its coasts. "The relevant clause was introduced for the sole purpose of legalizing the transfer from Italy to Greece."⁶⁶ Therefore, and according to Article 16 of the Lausanne Treaty, there are no Turkish rights over territories outside the three-mile zone.

(d) The Imia/Kardak Islets are Closer to the Turkish Coasts

Despite the fact that Turkey renounced its rights outside the three-mile zone, it still lays claim over the Imia/Kardak islets. According to the Turkish reasoning, the fact that the Imia/Kardak islets are closer to the periodically inhabited island of Kalolimnos is rejected on the ground that this island is not mentioned in the Lausanne Treaty. The only adjacent Greek island which is mentioned in that treaty is Kalymnos. Therefore, and since in international law there is no notion like "adjacent to the adjacent," the Turkish Ministry of Foreign Affairs claims that Imia/Kardak "which lie at 3.8 nautical miles off the Turkish mainland belong to Turkey and the Greek challenge to Turkish sovereignty cannot be sustained under international law."⁶⁷

It is interesting to examine this position which is based on the contiguity of the Turkish coast to Imia/Kardak. The role of the contiguity factor usually begins from what was said about it in the *Island of Palmas* arbitration where Judge Huber stated that it is "impossible to show the existence of a rule of positive international law to the effect that islands situated outside territorial

64. Roucek, *AJIL*, 1944, p.705.

65. See the *Greek White Book*, Doc.45, pp.35-37.

66. Roucek, *AJIL*, 1944, p.705.

67. 2nd Turkish *note verbale*, 29 January 1996.

waters should belong to a State from the mere fact that its territory forms the *terra firma*.”⁶⁸ Thus, the principle of contiguity, although it is relevant in assisting the determination of the limits of a title, is not admissible “as a rule establishing *ipso jure* the presumption of sovereignty in favor of a particular State.”⁶⁹

Contemporary international law theory “rejects any title based on contiguity *per se*.”⁷⁰ Contiguity cannot be an independent root of title since it “is an aspect of possession. It cannot be a rule of title independent of possession.”⁷¹ Assuming that a certain territory is contiguous in a geographical sense to a certain sovereignty, “this can never mean that the same sovereign has title over that parcel of territory without more ado.”⁷² Therefore, contiguity in the case of Imia/Kardak cannot be considered as an independent source of title, and Turkey cannot rely on the mere fact that Imia/Kardak may be closer to the Turkish coast than to the Greek. If there existed another root of title, then geographical proximity could have played a certain role. Nevertheless, in this specific case the only root of title that exists is the title offered by the Lausanne Treaty to the Dodecanese islands over their dependent islets. On the contrary, Turkey does not have any similar title since Imia/Kardak lie a distance of 3.7 miles from the Turkish mainland coast and, according to Article 16 of the Lausanne Treaty, there are no Turkish rights over territories outside the three-mile zone.

(e) *The Interesting Case of the Rabbit Islands*

One of the most important aspects of the principle of good faith is that treaty obligations must be carried out in accordance with “the common and real intention of the Parties at the time the treaty was concluded” which is “the spirit of the treaty and not its mere literal meaning.”⁷³ This principle is important in relation to the Lausanne Treaty. The reason is that the text of this treaty is not as clear as should have been expected for a treaty which was the object of negotiations between several states for months and which established, more or less, the legal status quo in the eastern Mediterranean region. Somebody who is not familiar with the circumstances which led to the 1923

68. *Island of Palmas* arbitration, 1928, *RIAA*, Vol. 2, p.854.

69. *Island of Palmas* arbitration, 1928, *RIAA*, Vol. 2, p.854.

70. Bowett, 1979, p. 46.

71. Jennings, 1963, p. 74.

72. *Ibid.*, p. 75.

73. Cheng, 1987, p.114.

peace settlement, the historical context of that period and the spirit and purpose of the participating states may find himself slightly confused with certain "omissions" of the treaty.

The best example of this situation is the case of the Rabbit islands. These islands (which can be better described as rocky islets) lie in the entrance of the Dardanelles, between the islands of Imbros and Tenedos. Article 12 of the Lausanne Treaty specifically excepted the Rabbit islands, together with Imbros and Tenedos, from the other Aegean islands which passed under Greek sovereignty. Article 14 referred to the Aegean islands which remained under Turkish sovereignty. The islands specifically mentioned were Imbros and Tenedos. There was no reference at all about sovereignty over the Rabbit islands. According to the recent Turkish approach towards the Lausanne Treaty, the Rabbit islands constitute the best example of a "gray" area of sovereignty.

A similar approach can be taken in relation to the islands which are situated in the Sea of Marmara. These islands, like the island of Marmara which is substantial in terms of size and population, are not situated within the three mile zone from the coast. Therefore, they can be considered as another case of "gray" area of sovereignty.

2. THE 1932 AGREEMENTS

The validity and the extent of rights over the Aegean islands at the time of their acquisition was examined by reference to the rules of law then prevailing. Even though the question of the title over the Aegean islands was settled by the Lausanne Treaty, there were no boundaries delimiting the exact areas of sovereignty between Greece, Italy and Turkey in the Aegean Sea, with the exception of a very limited area next to the shores of the Evros river in Thrace.⁷⁴ Before the acquisition of the Dodecanese islands by Greece, negotiations between Italy and Turkey led to the conclusion of a convention and the adoption of a boundary line the extent of which is in dispute between Greece and Turkey.

According to the 1947 Paris Treaty, Italy ceded sovereignty over the Dodecanese islands to Greece which consequently succeeded Italy and inherited the legal regime existing in the area. There is a long-established principle of customary law according to which "traditionally the boundary treaty, the

74. *See supra*, p.41 and fn.27.

'dispositive' treaty *par excellence*, has been regarded as passing on succession."⁷⁵ Therefore, what is in question is the existence of the agreements which were signed between Italy and Turkey, or their binding or enforceable character.

On 4 January 1932, Turkey and Italy, after a long dispute which was submitted at a certain stage to the PCIJ,⁷⁶ concluded a convention determining the sovereignty over the islets around Kastellorizo, as well as over the island of Kara-Ada.⁷⁷ It is important to specify the reason for the dispute. Article 15 of the Lausanne Treaty specified the territories placed under Italian sovereignty as the Dodecanese islands, their dependent islets and the island of Kastellorizo. Kastellorizo lies less than two miles from the Turkish coasts. There was no mention of the sovereignty over the thirty-one islets which surrounded it. Turkey laid claims on these islets on the ground that it had rights over the islands which are situated in a zone of three miles from its coasts. Finally, it was agreed that the islets situated within the circle which was drawn from the Dome of the Kastellorizo Church to Cape Stefanon belonged to Italy together with the islands of St. Georges, Dragonera, Ross and Stronghlyi. The convention was ratified in April 1933 and it was registered with the Secretariat of the League of Nations on 24 May 1933 at the request of Italy. At the time of the signature of the January Convention, Italy was the only signatory state which was a member of the League of Nations. Turkey became a member on 18 July 1932. These are the only points on which Greece and Turkey totally agree.

The day that the January 1932 Convention was signed, the representatives of the two states exchanged letters with a view to extend the boundary line in order to cover the whole of the Dodecanese area. It is interesting to note at this point that Turkey claims today that the two parties decided to hold further talks "upon Italy's request."⁷⁸ Nevertheless, it is clear from the exchange of the letters that the Turkish minister of foreign affairs took the initiative to propose to the Italian ambassador the delimitation of the

75. Bowett, *ASIL Proc.*, 1966, p.132.

76. *Delimitation of the Territorial Waters between the Island of Kastellorizo and the Coasts of Anatolia*, (Italy-Turkey), Special Agreement, *PCIJ Series C*, No. 60, 1929, *World Court Reports*, Vol. III, 1932-1935, p.117.

77. Convention on the Delimitation of the Territorial Waters between the Coasts of Anatolia and the Island of Kastellorizo, *LNTS*, Vol. 138, p. 243.

78. "Legal Backgrounder on the Kardak Crisis in Nutshell," *supra*, fn. 7.

remaining maritime boundary.⁷⁹ The Italian ambassador agreed to propose to his government the delimitation of this boundary.

As a result of the exchange of the letters, Turkey and Italy concluded on 28 December 1932 an agreement which delimited the Italian and Turkish sovereignty between the Dodecanese islands and the Turkish coasts. According to the first Article of the December 1932 agreement, the boundary line delimited the territories which appertained to each state. The line was based on 37 points and referred explicitly to the Imia/Kardak islets at point 30 according to which this line passed "à moitié distance entre Kardak (Rks.) et Kato I. (Anatolie)."⁸⁰ Unfortunately, Greece and Turkey are in total disagreement on the legal existence of the December 1932 agreement. Their opposing legal views as well as some other aspects concerning the 1932 agreements are to be examined on the following pages.

At this point, it has to be mentioned that a significant part of this examination is based on the official correspondence between the Italian and the Turkish governments which was conducted after the conclusion of December 1932. More specifically, between 3 January 1933 and 28 November 1936, six diplomatic notes were exchanged between the Ministries of Foreign Affairs of the two states. All these notes referred exclusively to the December 1932 agreement and they shed light on many aspects which have not been mentioned until now in the opposing legal views of Greece and Turkey.⁸¹

3. THE DECEMBER 1932 AGREEMENT WAS NOT A REPORT

The first question that arises in connection with the December 1932 document is whether at the time that it was concluded it was intended to be an international agreement. The reason for this question is the change of the Turkish positions as it regards the description of the December 1932 agreement. More specifically:

79. The two letters were published on the World Wide Web site (<http://www.hri.org>).

80. A photocopy of the initial document of the December 1932 agreement bearing the signatures of the representatives of the two states was kindly offered by the legal department of the Greek Ministry of Foreign Affairs.

81. The correspondence was published in Greek in the Athens newspaper *Kathimerini* on 31 March 1996. The official texts of the correspondence were kindly offered by the Special Legal Service of the Greek Ministry of Foreign Affairs.

- Just before the January 1996 incident, Turkey recognized the existence of the two agreements which concerned "the possession of the small south-eastern islands in the Aegean and the delimitation of territorial waters in the region."⁸² The December 1932 document was described as an "agreement" or as "agreed minutes."⁸³

- In a letter of the Turkish Delegation to NATO ten days after the January 1996 incident, the Turkish ambassador presented the December 1932 document as "merely a protocol covering discussions held between Turkish and Italian representatives."⁸⁴

- In the official positions of the Turkish Ministry of Foreign Affairs which were published some months after the incident on the World Wide Web site, it was asserted that "some legal experts" suggested that the legal format of the December 1932 document "resembles a report rather than a Protocol" and therefore it was a document which covered discussions held between Turkish and Italian representatives.

As has been stated earlier in this work, there is no standard form for international agreements between states.⁸⁵ The December 1932 agreement is described after its conclusion in the official correspondence between the Turkish and Italian governments as a "*procès-verbal*."⁸⁶ This *procès-verbal* was concluded between officials of the two governments. The fact that the representatives of Italy and Turkey were low rank officials in no way diminishes the value of the *procès-verbal* since there is no rule in international law which provides that only heads of state or government or Ministers of Foreign Affairs can express the consent of states to be bound by treaties.

At this point, it may be asked why the two governments assigned to low rank officials the duty of drawing the Italian-Turkish boundary and did not ask the assistance of diplomats or legal experts. The answer to this question lies in the fact that, as it has been repeatedly expressed prior to the conclusion of the *procès-verbal* as well as after its signing, "toute la partie restante" of the Italian-Turkish frontier was not the object "d'aucun différend et d'aucune

82. 2nd Turkish *note verbale*, 29 January 1996.

83. *Ibid.*, see also Turkish Press Release dated 30 January 1996 on the position of the Turkish government regarding the Kardak rocks.

84. Letter of the Turkish ambassador to NATO, 728/9 February 1996.

85. See *supra*, p.142, fn.5 and pp.252-252.

86. In all the other letters exchanged between the two governments.

contestation" [of any difference and of any contest].⁸⁷ The two governments were not in disagreement as to the position of the maritime boundary. It was simply a matter of drawing the exact line of the boundary, a task assigned exclusively to technical experts. This fact is an important indication that the *procès-verbal* was considered as a document of supplementary character.

Also, there is no evidence which suggests that the *procès-verbal* was only a report of the discussion held between Italian and Turkish officials. According to the preamble of the *procès-verbal*, as well as the first of the letters addressed to the Italian Ministry of Foreign Affairs by Turkey after the signing of the agreement, the Italian and Turkish delegations were charged with the mission to draw the specific limits of the Italian-Turkish boundary which remained unfixed after the January 1932 agreement. These two delegations "après plusieurs séances tenues" [after several meetings] managed to reach a "commun accord" [common consent] on the boundary line and to include this solution in the *procès-verbal* as well as in its annexes.⁸⁸

The language used proves that there is no legal ground for this *procès-verbal* to be named as a report. According to the ICJ, a report which covered discussion is expected to give merely "an account of discussions and summarize points of agreement and disagreement."⁸⁹ On the contrary, it is clear that the 1932 *procès-verbal* was intended to create legal obligations. Expressions such as "la ligne frontière est tracée pour fixer l'appartenance des territoires possédés..." [the boundary line was traced in order to fix the appurtenance of the possessed territories], or "la ligne frontière déterminera la souveraineté des deux pays" [the boundary line will determine the sovereignty of the two countries] have a regulating character inherent in international documents creating obligations. The *procès-verbal* enumerated "the commitments to which the Parties have consented" and accordingly it created "rights and obligations in international law for the Parties," which rights and obligations "constitute an international agreement."⁹⁰

87. Italian and Turkish letters exchanged on 4 January 1932; Turkish letter of 3 January 1933.

88. Letter of Turkish Foreign Minister Tecfik Rustu Aras Bey to Italian Ambassador Vincenzo Lojacono, 3 January 1933.

89. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, (Qatar v. Bahrain), ICJ Reports, 1994, §.25.

90. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, 1994, §.25.

4. THE RELATIONSHIP BETWEEN THE JANUARY AND DECEMBER 1932 AGREEMENTS

According to Greece, the December 1932 *procès-verbal* was an "annex to the original convention" of January 1932 and it formed "an integral part of the initial agreement"⁹¹ or it "is supplementary to the first" agreement⁹². Turkey's position is in total disagreement with the Greek views. Thus, the December *procès-verbal* is "neither related to the agreement of 4 January 1932 nor constitutes an annex to it"⁹³ and it "bears no reference to the January 1932 [agreement] so as to suggest any linkage."⁹⁴ The connection between the two agreements is important because it is related with their registration to the League of Nations.

The January 1932 convention makes no reference at all to the December 1932 *procès-verbal*. Also, there is no mention of any annexes, protocols or other agreements which were to follow the signing of the first treaty. The January 1932 convention is a complete international agreement with a limited territorial application, as is expressly stated in its preamble, which refers exclusively to the area between the island of Kastellorizo, the Turkish coasts and the island of Kara-Ada. On the day of the signing of the convention, there was, however, an exchange of letters between the two parties which explicitly mentioned that, after the conclusion of the January agreement, there was no obstacle "de procéder de suite au tracé de cette partie de la frontière" [to proceeding continuously in the delimitation of this part of the boundary] which was left out of the first delimitation, and it was incontestable by the parties.⁹⁵ Although the two letters were not annexed to the registration of the January 1932 convention, Turkish Minister of Foreign Affairs Rustu Aras two years after the signing of the December 1932 *procès-verbal* referred to "le texte de la lettre annexée à la convention du 4 janvier 1932" [the text of the letter annexed in the 4 January, 1932 convention].⁹⁶

91. Letter of the Greek ambassador to NATO, 5 February 1996.

92. "Memorandum on the Crisis of the Imia Rocky Islets and on the Greek-Turkish Relations," circulated in the Greek Embassies of the EU countries in February 1996.

93. Letter of the Turkish ambassador to NATO, 728/9 February 1996.

94. "Legal Backgrounder on the Kardak Crisis in a Nutshell," *supra*, fn. 7.

95. Letter of the Italian ambassador in Ankara to the Turkish minister of foreign affairs, 4 January 1932.

96. Letter of Turkish Foreign Minister Rustu Aras addressed to Italian Ambassador Carlo Galli, dated 20 November 1935.

The whole diplomatic procedure which consisted of the two letters exchanged between the Italian and Turkish delegations "lors de la signature de la convention" [during the signing of the convention], which convention delimited the area around Kastellorizo, was specifically mentioned in the preamble of the December 1932 *procès-verbal*. This *procès-verbal* was described as being pursuant to the exchange of these letters. Thus, the text of the letters which speaks for the continuation of the yet undelimited boundary, the date of the exchange of the letters as well as the fact that, as has been seen, the December 1932 *procès-verbal* was conducted between low rank officials offer good evidence that it was directly related to the January 1932 convention. Was this relation tantamount with the supplementary character of the December 1932 *procès-verbal*? This question has to be asked together with another question: Could the December 1932 *procès-verbal* be a complete and free-standing agreement if the January 1932 convention did not exist? The answer could have been affirmative to the extent that the preamble of the December 1932 *procès-verbal* would have not existed in the first part of the *procès-verbal*. The existence of the preamble is something that cannot be overlooked. It is a generally accepted rule of international law that a treaty is comprised of its text, "including its preamble and annexes."⁹⁷ The ICJ has regarded the preamble of the treaties as showing their object and purpose.⁹⁸ Thus, its existence in the December 1932 *procès-verbal* shows the interdependence of the two 1932 agreements.

At this point, a fact has to be mentioned which demonstrates not only this interdependence but moreover the supplementary character of the December 1932 *procès-verbal* to the January 1932 convention. Turkish Minister of Foreign Affairs Aras considered in 1935 that "le *procès-verbal* du 28 décembre 1932 et les cartes y annexées faisant partie inhérente à l'accord du 4 janvier 1932" [the *procès-verbal* of 28 December 1932 and the maps annexed to it constituted an inherent part of the agreement of 4 January 1932]. He also described *expressis verbis* the December 1932 *procès-verbal* as "un accord supplémentaire" [a supplementary agreement] and considered that the two 1932 agreements form one "accord définitif" [definite agreement].⁹⁹ No objection was raised by the Italian government to Mr. Aras's positions. The words of the Turkish foreign minister leave no room for doubt. The De-

97. Article 31 (2) of the 1969 Vienna Convention of the Law of Treaties.

98. *Rights of United States Nationals in Morocco*, ICJ Reports, 1952, p.196.

99. Letter of Turkish Foreign Minister Rustu Aras addressed to Italian Ambassador Carlo Galli, dated 20 November 1935.

cember 1932 *procès-verbal* was considered by the two parties to have a supplementary character to the January 1932 convention.

5. THE RATIFICATION OF THE 1932 PROCÈS-VERBAL

One of the main Turkish arguments concerning the December 1932 *procès-verbal* is that it has not been ratified either by Italy or by Turkey. This is considered by the latter as a constitutional prerequisite for any agreement to take effect. According to Article 2.1 of the 1969 Vienna Convention on the Law of Treaties:

‘ratification,’ ‘acceptance,’ ‘approval’ and ‘accession’ mean in each case the international act so named whereby a state establishes on the international plane its consent to be bound by a treaty.

The reason for the ratification procedure is that “states need time after agreement has been reached upon a definitive text of a treaty before they feel able to commit themselves to it.”¹⁰⁰

According to Article 14 of the above-mentioned convention, the consent of a state to be bound by a treaty is expressed by “ratification, acceptance or approval” when (a) the treaty so provides, (b) it is otherwise established that the negotiating states were agreed that ratification should be required, (c) the representative of the state has signed the treaty subject to ratification, or (d) the intention of the state to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation. The January 1932 agreement expressly stated in Article 7 that “la présente convention sera ratifiée et les ratifications en seront échangées” [the present convention will be ratified and the ratifications will be exchanged].¹⁰¹

The *procès-verbal* did not contain any similar clauses. Nevertheless, there is clear evidence that the Turkish argument concerning the non-ratification of the treaty is totally groundless. In the exchange of letters which followed the *procès-verbal*, the Turkish as well as the Italian government stated in *expressis verbis* that they had approved the *procès-verbal*. The Turkish foreign minister wrote to Rome that his government “a approuvé le *procès-verbal* et les cartes y annexées pour la délimitation maritime entre la Turquie et l’Italie tracée le 28 décembre 1932” [has approved the *procès-*

100. Oppenheim, 1992, p.1227.

101. The January 1932 agreement was published in the *OfTuGaz*, 25 January 1933, Nr.2313, Classification C, Vol. 14/1, pp.219-225.

verbal and the maps annexed to it for the maritime delimitation between Turkey and Italy drawn on 28 December 1932] and the Italian government also approved the *procès-verbal*.¹⁰² The use of the word "approval" instead of "ratification" is irrelevant. The Vienna Convention "treats approval and acceptance as analogous to ratification for all purposes."¹⁰³ Moreover, it is accepted that, especially when the approval is followed by signature, it is practically synonymous to ratification "and may express a state's consent to be bound by a treaty under conditions similar to those which apply to ratification."¹⁰⁴

Therefore, Turkey and Italy expressed their consent to be bound by the December 1932 *procès-verbal* with the exchange of the letters of 3 January and 27 June 1933, respectively. Moreover, the fact that the December 1932 agreement did not contain any reference to its ratification may be considered as further proof of its auxiliary character to the January 1932 agreement.

6. THE REGISTRATION OF THE DECEMBER 1932 AGREEMENT

The December 1932 *procès-verbal* was never registered with the League of Nations. There is no such evidence in the indices for the League of Nations Treaty Series and this point was also noted by the Soviet Union during the Paris Peace Conference in 1946.¹⁰⁵ Due to the non-registration of the *procès-verbal*, Turkey claims that "it is not valid"¹⁰⁶ because "a legal document does not exist in this context."¹⁰⁷ Greece claims, on its part, that due to the supplementary character of the *procès-verbal* there was no need for registration.

Before examining the requirement for registration as such, it has to be mentioned that if there were an obligation for registration this obligation should have been fulfilled after November 1936. The reason was that, after the conclusion of the December 1932 *procès-verbal*, the Italian and Turkish

102. Letter of 27 June 1933 of Italian Ambassador Lojacono to the Turkish Republic answering the letter of Turkish Foreign Minister Tecfik Rustu Aras Bey addressed to Italian Ambassador Vincenzo Lojacono, dated 3 January 1933.

103. Oppenheim, 1992, p.1236, fn.4.

104. Oppenheim, 1992, p.1236.

105. 10th and 12th meetings of the Legal and Drafting Commission, 3 and 5 October 1946, *Collection of Documents of the Paris Conference*, Vol. 3, pp.359, 363-364.

106. "Legal Backgrounder on the Kardak Crisis in a Nutshell," *supra*, fn. 7.

107. 2nd Turkish note verbale, 29 January 1996.

governments were engaged in negotiations with reference to the area covered by the *procès-verbal*. The extent of the area long remained uncertain even after ratifications were exchanged. From the correspondence between the Italian and Turkish ministries, it is evident that the whole matter was settled on 28 November 1936. Therefore, before this date the two governments did not have to register the *procès-verbal* since the same practice has been followed between the governments of Italy and the Serb-Croat-Slovene state. These states presented for registration the Treaty of Rapalo three years after its conclusion in 1920 due to the fact that they were engaged in further negotiations in relation to its status.¹⁰⁸ Several questions have to be answered in relation to the registration of treaties. The first concerns the obligation to register a treaty. The second is related to the consequences of the non-registration of a treaty. A third question is related to the right of Turkey to invoke the non-registration of the December 1932 *procès-verbal*.

(a) *The Registration Requirement*

The registration requirement was embodied in Article 18 of the Covenant of the League of Nations which provided that:

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

The reason for this requirement was the abolition of secret diplomacy which provoked widespread dissatisfaction during the First World War. The subject of open diplomacy was embodied in U.S. President Woodrow Wilson's Fourteen Points in 1918.¹⁰⁹ When the requirement for the registration of treaties was included in the Covenant, it constituted a striking innovation since no precedents for it existed.¹¹⁰ Thus, a preliminary study of the provisions of Article 18 was made by the Secretariat of the League of Nations and a memorandum was approved by the Council of the League. According to this

not only every formal Treaty of whatsoever character and International Convention but also any other International Engagement or Act by

108. Treaty of Rapalo, Rome, 12 November 1920, *LNTS*, 18, p.388. See agreement on p.406.

109. *AJIL*, 1919, p.161.

110. Hudson, *AJIL*, 1925, p.276.

which nations or their governments intend to establish legal obligations between themselves and another State, Nation or government.¹¹¹

At first sight, the language of Article 18 as well as that of the memorandum leaves no room for doubts. All treaties, irrespective of whatever particular label and form they had been given, had to be registered with the League. Nevertheless, the disposition concerning the obligatory force of the registration "n'a pas été appliquée avec rigueur" [was not strictly applied].¹¹² Thus, the discussions in the League, the proposed amendments and the experience of its application give a different interpretation of the bearing of Article 18.

The innovative character of Article 18 and the lack of any experience as concerns its application was apparent in the memorandum itself which emphasized that "an extensive interpretation of its provisions should be adopted."¹¹³ Some months after the adoption of Article 18, an incident concerning the non-registration of the terms of an understanding between France and Britain precipitated a discussion of Article 18 in the First Assembly of the League of Nations.¹¹⁴ The Assembly entrusted the examination of the scope of Article 18 to a committee of experts.¹¹⁵ During the period that the committee was studying the question of Article 18, the British government declared to the League that it was of the opinion that, as it concerned some arrangements of small general importance, "it would be unnecessary and in many cases inexpedient to make the details of such transactions public."¹¹⁶

The committee of experts approached Article 18 from the point of view of those who drafted the convention who wanted to "suppress secret aggressive treaties injurious to the peace of nations."¹¹⁷ It found out that the brief experience showed that the members of the League "have by no means fully complied with the obligations of Article 18" and that this Article "as now

111. Memorandum on the Registration and Publication of Treaties as prescribed under Article 18 of the Covenant of the League of Nations, Council of the League of Nations, (1920), *LNTS*, Vol.1, pp.9-13.

112. Bastid, 1985, p.107.

113. Memorandum on the Registration and Publication of Treaties, *LNTS*, Vol.1, pp.9-13.

114. On the incident, see *New York Times*, 2 November 1920, p.17.

115. Records of the First Assembly Plenary Meetings, pp.209-210.

116. Letter to the secretary general, 15 February 1921, *Official Journal of the League of Nations*, 1921, p.224.

117. Balfour, member of the Committee cited in Hudson, *AJIL*, 1925, p.281.

worded could never be fully or strictly carried out in practice.”¹¹⁸ The amendments proposed by the committee of experts were studied by the First Committee of the Second Assembly which proposed to the Assembly the following addition to Article 18:

It shall not be obligatory to submit for registration instruments of a purely technical or administrative nature which have no bearing on political international relations, nor instruments which consist merely of technical regulations defining, without in any way modifying, an instrument already registered, or which are only designed to enable such an instrument to be carried into effect.¹¹⁹

During the discussions of the Second Assembly, a wide divergence of views between the members of the League was revealed in connection with Article 18.¹²⁰ Finally, the Assembly decided to postpone the decision on the amendments. A proposal to leave the members of the League “at liberty to interpret their obligations under Article 18 in conformity with the proposed amendment” was voted by twenty-eight members to five, but it was not adopted because it was considered as a resolution which required a unanimous decision and not as a recommendation.¹²¹

In the Third Assembly of the League in 1922, the matter was briefly reopened since it was concluded that “time and experience alone will supply the material for giving a precise interpretation” of Article 18.¹²² Consequently, it was stated that “considerable latitude has been allowed in the application of Article 18.”¹²³ A resolution to the effect that the whole matter should be reopened after gaining more experience over a longer period of time was adopted by the Assembly.¹²⁴

118. Report of the committee of experts on the examination of the scope of Article 18 to the Second Assembly of the League of Nations, Doc. C. 256.1921.V. (A.C.31).

119. Records of the Second Assembly, Meetings of Committee, I, p. 195, Plenary Meetings, p.700.

120. Hudson, *AJIL*, 1925, p.285.

121. On the transformation of the proposal to a resolution and not to a recommendation, see Hudson, *AJIL*, 1925, p.284.

122. Records of the Third Assembly, Minutes of the First Committee, p.26-27, 32,35.

123. For the report on this issue, see Records of the Third Assembly, Minutes of the First Committee, p.92, Plenary Meetings, II, p.151.

124. Records of the Third Assembly, Plenary meetings, I, p.218.

A year after this decision, in 1923, the Institute of International Law in its meeting in Brussels also examined Article 18. The two rapporteurs accepted the above-mentioned proposals of the First Committee to the 1921 Assembly. Thus, they submitted proposals according to which "the interpretation of Article 18 in conformity with its spirit" did not render obligatory the submission of certain instruments which have no bearing on political international relations or which consisted merely of technical regulations defining an instrument already registered.¹²⁵ Although Article 18 as well as its memorandum remained unchanged throughout the existence of the League, Spyropoulos considered in 1940 that the severity of their application was modified in practice.¹²⁶

All the factors discussed above show that it is more than evident that serious difficulties were provoked by the excessiveness of the language of Article 18 which included all treaties and international engagements. For that reason, the whole issue was left to be answered by state practice. It is often cited, regarding state practice, that up to July 1944 a total of 4,822 treaties or international engagements were registered under Article 18.¹²⁷ Nevertheless, the number of the treaties registered does not imply that the states register all their treaties. According to Professor Reuter, 25% of the international agreements are not registered.¹²⁸

According to another scholar, international practice only partially fulfilled the intentions of the authors of Article 18 for a systematic registration of all the international acts. This failure was due to the fact that, with the exception of the treaties concluded under the auspices of the League, the information for the other international engagements was totally dependent on the good will of the states.¹²⁹ That was the reason that the second sentence of Article 18, according to which no treaties shall be binding until registered, was "removed by the revised version which appears today as Article 102 of the United Nations Charter" and it "is incorporated in Article 80 of the Vienna Convention and Article 81 of Convention of 1986."¹³⁰

125. Rapporteurs Adatci and De Visser in *Revue de Droit International et de Droit Comparé*, 4, (3 ser.), p.671.

126. Spyropoulos, 1940, p.258.

127. Oppenheim, 1948, p.825.

128. Reuter, 1985, p.52, fn.85.

129. Nguyen, Dailler, Pellet, 1992, p.159.

130. Rosencne, 1989, p.355.

Therefore, it can be concluded that the answer to the question whether the December 1932 *procès-verbal* had to be registered is the following: The reason for the registration requirement of Article 18 was the elimination of secret diplomacy. The legislative history of Article 18, its memorandum, the various amendments proposed in different periods and the practice of the states as evidenced in the years before the Second World War show that the registration requirement was never fully fulfilled. There was a tendency of states not to register treaties of minor importance such as "technical regulations defining without in any way modifying an instrument already registered." The December 1932 *procès-verbal* seems to fall under this classification due to its supplementary character to the January 1932 convention. It was an agreement of a purely technical nature concluded between low-rank officials. These officials undertook the technical task of drawing a boundary in an area defined by the letters exchanged between Italy and Turkey, which letters were considered as being annexed, according to the Turkish minister of foreign affairs, to the January convention. The area of the boundary was not in dispute between the two states as has been repeatedly mentioned during that period. Therefore, it was a technical agreement of minor importance. Finally, the content of the December 1932 *procès-verbal* falls totally outside the scope and spirit of those who have drafted Article 18 and had only desired to suppress secret treaties injurious to the peace of the world.¹³¹

(b) Juridical Effect of Non-Registration

Despite the fact that the *procès-verbal* did not have to be registered, it is important to examine as well the legal effect of non-registration of treaties under Article 18 of the Covenant. As has been rightly observed in view of the language of Article 18, "it is difficult to escape the view that non registration was a fatal defect and affected the essential validity of the treaty."¹³² Nevertheless, the debate on the effect of the non-registration started quite early since, in the First Assembly of the League, the Dutch representative van Karnebeek spoke about "many varying interpretations" which had been placed upon Article 18. According to these interpretations, (a) the signatories were not bound prior to registration, (b) they were bound but could not demand execution prior to registration and (c) they were bound to proceed with

131. See different view in Lee Mikyong, 1996, pp.3-7.

132. McNair, 1961, p.183.

execution but the unregistered instrument was enforceable before a League organ.¹³³

The committee of experts which examined the scope of Article 18 did not find any indication that "the authors of the covenant had any intention of undermining in this connection the legal value of the consent of the parties."¹³⁴ The agreement was considered to be a "contract" and the "contracting" parties were "no longer free to escape unilaterally from its obligations." The registration requirement, however, was considered as giving "binding force" to that contract, otherwise it "suspends the obligation to fulfill the conventional engagements."¹³⁵ During the discussion of the amendments of Article 18 in the Second Assembly of the League, the view that unregistered treaties were not binding was described as "absurd."¹³⁶ In the meeting of the Institute of International Law at Brussels in 1923, the two rapporteurs which examined Article 18 of the Covenant proposed that the non-registration did not affect the existence of a treaty which became definite after the conclusion of the diplomatic formalities. The only limitation of the non-registration was that it was considered as unenforceable before the organs of the League.¹³⁷

In the writings of publicists, various theories have been advanced in relation to the effect of the non-registration of treaties. Thus, it was not clear whether "failure to register a treaty...made it entirely void, or voidable at the instance of a party to it, or merely incapable of being cited and relied upon before the Assembly of the League or the Permanent Court."¹³⁸ However, it has to be noted that most of these theories were advanced during the period of the existence of the League of Nations and were irrelevant to state practice.¹³⁹ Hence, another commentator considered that Article 18 became

133. Records of the First Assembly Plenary Meetings, p.155. See also Tittoni's view on p.177.

134. Report of the committee of experts on the examination of the scope of Article 18 to the Second Assembly of the League of Nations, Doc. C. 256.1921.V. (A.C.31).

135. Report of the committee of experts on the examination of the scope of Article 18 to the Second Assembly of the League of Nations, Doc. C. 256.1921.V. (A.C.31).

136. Spailakovitch (Serb-Croat-Slovene State) Records of the Second Assembly, Plenary Meetings, p.849.

137. See *supra*, fn.125.

138. Oppenheim, 1948, pp.826-827. See also Brandon, *BYBIL*, 1952, pp.187-188.

139. See Brandon, *BYBIL*, 1952, pp.187-188.

obsolete through disuse due to actual practice under the League of Nations.¹⁴⁰ Nguyen, Dailler and Pellet determined with regard to an unregistered treaty that "il était simplement inopposable devant les organes de la S.D.N." [it could not simply be invoked before the organs of the League].¹⁴¹ Bastid agreed with that view since when a non-registered treaty was invoked in front of a tribunal, "ce tribunal, indépendant de la S.D.N., l'a appliqué."¹⁴²

Thus, more light can be shed on the legal effect of the non-registration of treaties through some international legal decisions which faced the problem whether to rely or not on unregistered treaties. In the *Mavromatis Palestine Concessions* case, the PCIJ treated as being in force the Lausanne Peace Treaty and Protocol XII although these instruments were not registered in pursuance of Article 18. The two parties to the litigation, Greece and Great Britain, were members of the League and were signatories to the treaty. The Court did not refer to the question of registration but simply considered that "the Treaty is now in force and Protocol XII has become applicable as regards Great Britain and Greece."¹⁴³

In its Advisory Opinion to the *Polish Postal Service in Danzig*, the PCIJ discussed the case of the so-called Warsaw Agreement between Poland, which was a member of the League, and the Free City of Danzig, which was not. This agreement has not been registered but this did not prevent the Court from relying upon it.¹⁴⁴ In the *Pablo Najeve* case in 1928, the Franco-Mexican Mixed Claims Commission declined to uphold the Mexican objection to the binding force of an unregistered treaty, relying *inter alia* on the fact that the Commission was independent of the League.¹⁴⁵

Not only the PCIJ but the ICJ as well also faced the problem of unregistered treaties. It has permitted parties to rely on claims and benefits under unregistered agreements in the course of disputes before it.¹⁴⁶ Thus, it ac-

140. Aron Broches, in "Theory and Practice of Treaty Registration with Particular Reference to Agreements of the International Bank" (1957), cited in Lee Mikyoung, 1996, p.8, fn.31.

141. Nguyen, Dailler, Pellet, 1992, p.159.

142. Bastid, 1985, p.107.

143. *Mavromatis Palestine Concessions*, PCIJ Series A, No. 2, 1924, p.33.

144. *Polish Postal Service in Danzig*, Advisory Opinion, PCIJ Series B, No. 11, 1925, p.39

145. *Pablo Najeve* (of the Lebanon) case, 1928, AD, Vol.4, (1927-1928), no.206.

146. Rosenne, 1965, p.474.

cepted in the *South West Africa* cases that since Article 18 was designed to secure publicity and avoid secret treaties, if the objective of publicity was achieved through other means the second sentence of Article 18 would not come into play.¹⁴⁷ Also, in a recent case in 1994, the ICJ considered that an unregistered agreement which nonetheless could not be invoked before any organ of the U.N. was valid and binding upon the parties.¹⁴⁸

After the examination of the legal effects of the non-registration, the following points can be made in relation to the December 1932 *procès-verbal*: If the *procès-verbal* was already known by some other means, the purpose of Article 18 for the elimination of secret diplomacy was in fact satisfied and registration has to be considered as a mere technical requirement. The fact that during the Paris Conference in 1946 the delegates knew about the *procès-verbal*, as is proved by the Soviet comments as well as by the Greek interventions on this issue, is a clear indication that the international community knew of the *procès-verbal* before 1946 and certainly after the Paris Conference.¹⁴⁹ Therefore, the December 1932 *procès-verbal* was not a secret agreement and the requirement for publicity was fulfilled.

In any case, the non-registration of the December 1932 *procès-verbal* is irrelevant to its validity and enforceability. It produces a breach of the Covenant but does not touch upon the validity of the *procès-verbal*. Thus, it cannot be invoked in front of an organ of the League of Nations. Nonetheless, jurisprudence accepts that it can be invoked in front of an international tribunal irrelevant with the League. It is important to point out that the PCIJ was not an organ of the League of Nations under the Covenant. Therefore, a member of the League could have invoked an unregistered treaty in front of the PCIJ. In contradiction to the PCIJ, the ICJ is one of the principal organs of the United Nations and in essence it is the continuation of the PCIJ with virtually the same statute and jurisdiction.¹⁵⁰ Thus, the December 1932 *procès-verbal* can be invoked in front of the ICJ on the same footprints that could be invoked in front of the PCIJ.

147. *South West Africa* cases, ICJ Reports, 1962, p.332.

148. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, ICJ Reports, 1994, §29-30

149. Lee Mikyong, 1996, p.13.

150. Art.7, and 92 of U.N. Charter; Art.1 of the Statute of the ICJ; Shaw, 1991, p.657; Brownlie, p.714.

(c) *Nullus Commodum Capere Potest de sua Injuria Propria*

"No one can be allowed to take advantage of his own wrong" declared the umpire in the *Montijo* case in 1875.¹⁵¹ This is a principle generally accepted in international law which has been repeatedly reaffirmed by international tribunals. In its Advisory Opinion on the *Jurisdiction of the Danzig Courts*, the PCIJ held that Poland "could not avail herself of an objection which...would amount to relying upon the non-fulfillment of an obligation imposed upon her by an international agreement."¹⁵² In the Advisory Opinion on the *Interpretation of Peace Treaties*, Judge Read considered "in any proceedings which recognized the principles of justice" no government would be allowed to raise an objection which would "let such a government profit from its own wrong."¹⁵³

Turkey became a member of the League of Nations in July 1932 and was bound by its Covenant. Some months later, in December 1932, the *procès-verbal* concerning the Dodecanese was signed. Both Italy and Turkey considered themselves as being bound by it as is revealed by the correspondence between them. Thus, they had to request the registration of the second agreement with the Secretariat of the League of Nations in accordance with Article 18 of the Covenant. Nevertheless, they failed to fulfill the registration requirement and the *procès-verbal* remained unregistered. Greece did not participate in this *procès-verbal* and, as a third party, could not ask for its registration. Turkey relies on the non-registration of the December 1932 *procès-verbal* and claims that Greece cannot invoke it on the grounds that Turkey itself failed to register it. The acceptance of this view means that Greece should "be penalized for actions it could not control."¹⁵⁴

Since international law accepts as a principle that "no one should be allowed to reap advantages from his own wrong"¹⁵⁵ it is Turkey that cannot invoke the December 1932 *procès-verbal* as a direct party to it. Greece as a third party cannot be prohibited from invoking the *procès-verbal* since Turkey cannot take advantage of its own wrong. Moreover, the PCIJ held

151. The *Montijo* case, (Colombia/U.S.), 1875, *Int.Arb.*, Vol. 2, 1898, p.1437.

152. *Jurisdiction of the Court of Danzig*, Advisory Opinion, *PCIJ Series B*, 15, 1928, p.26-27.

153. Judge Read Diss. Op., *Interpretation of Peace Treaties*, 2nd Phase, *ICJ Reports*, 1950, p.244.

154. Lee Mikyoung, 1996, p.11.

155. Cheng, 1987, p.150.

another manifestation of the principle "*nullus commodum capere potest de sua injuria propria*" which is the principle that "an unlawful act cannot serve as the basis of an action in law"¹⁵⁶ (*ex delicto non oritur actio*).¹⁵⁷ Thus, Turkey is also prohibited from using its failure to register the December 1932 *procès-verbal* as part of its legal basis to claim the islets of Imia/Kardak.

7. THE INFLUENCE OF THE POLITICAL SITUATION OF THE PRE-SECOND WORLD WAR ERA

One of the Turkish arguments which appeared in the second *note verbale* addressed to the Greek Embassy in Ankara is that the two 1932 agreements had been negotiated "within the context of the particular political situation of the pre-Second World War era."¹⁵⁸ The argument goes beyond the compromise of various factors which is a necessity of arriving at a solution through negotiations. It is an important claim because, although the rule *pacta sunt servanda* is a general principle in law, theory accepts that this principle does not apply to states in the same duress as it applies to individuals.

Since the Turkish argument is not very clear inasmuch as the expression "the special context of the political situation of the pre-Second World War era" does not mean in practice anything, two assumptions can be made in relation to its possible content. One of the exceptions which may be relevant in this case is that Turkey may claim that the 1932 agreements were concluded under duress and are therefore invalid. According to the ICJ, "there can be little doubt...that under contemporary international law an agreement concluded under the threat or use of force is void."¹⁵⁹ According to the Vienna Convention, a treaty "is void if its conclusion has been procured by threat or use of force in violation of the principles of international law embodied" in the U.N. Charter.¹⁶⁰

It is also true that, before the Second World War, Turkey showed a mistrust towards Italy. This mistrust grew after 1934 when Mussolini declared Italy's historic objectives in Asia and especially after 1935 with the

156. *South-Eastern Greenland case, PCIJ Series A/B*, No. 53, 1933, p.95.

157. Cheng, 1987, p.155.

158. 2nd Turkish *note verbale*, 29 January 1996.

159. *Fisheries Jurisdiction* (United Kingdom v. Iceland), Jurisdiction of the Court, 1973, §24. *Fisheries Jurisdiction* (Federal Republic of Germany v. Iceland), Jurisdiction of the Court, 1973, §24.

160. Art.52 of the Vienna Convention on the Law of Treaties.

Italian invasion of Ethiopia.¹⁶¹ However, before 1934 there was a rapprochement of the two countries. In April 1928, Mussolini met the Turkish minister of foreign affairs and a month later Italy and Turkey signed a Pact of Friendship and Arbitration which was part of the Italian plans for an alliance between Italy, Greece and Turkey.¹⁶² Moreover, the history of the negotiations which led up to the conclusion of the two 1932 agreements reveals that these instruments were freely negotiated on an equal basis and freedom of decision:

-The two states had previously submitted the case to the ICJ;¹⁶³

-The discontinuance of the proceedings took place only after the conclusion of both agreements on 3 January 1933;¹⁶⁴

-The area of the delimitation of the December 1932 *procès-verbal* was never in dispute between the two countries;

-The initiative for the *procès-verbal* belonged to Turkey and;

-The correspondence between the two countries after the conclusion of the agreements shows that they were on equal footing since they continued the negotiations for a long period without any hint of the threat or use of force.

Finally, it has to be observed that, if Turkey had reasons to believe that the two agreements were negotiated under the threat or use of force, it could have claimed the invalidity of the two agreements after the end of the Second World War. For more than fifty years, no similar claims were ever raised.

A second possible explanation of the Turkish view may be the fundamental change of the circumstances (*rebus sic stantibus*) which a state takes into account when it consents to be bound by a treaty. The fundamental change of circumstances may entitle it to seek its release from the treaty. Thus, the expression "the special context of the political situation of the pre-Second World War era" may imply that Turkey seeks recourse to the doctrine of the fundamental change of circumstances in the case of the 1932 agreements. The application of this doctrine is conditioned upon certain strict

161. Palmer, 1991, p.103; Koni, *TRQD.*, 1988, pp. 11-13.

162. Korandis, 1996, pp.363-365.

163. See the Special Agreement of 30 May 1929 in *Delimitation of the Territorial Waters between the Island of Kastelorizo and the Coasts of Anatolia*, (Italy-Turkey), *PCIJ Series C*, No. 60, pp.10-12.

164. *Delimitation of the Territorial Waters between the Island of Kastelorizo and the Coasts of Anatolia*, (Italy-Turkey), Order, *PCIJ Series A/B*, No. 51, 1933 pp. 4-6.

limits since the recognition of the principle *rebus sic stantibus* does not mean that "every change of conditions, or every disappointment of the hopes of one of the parties constitute a good reason for avoiding the treaty."¹⁶⁵ The ICJ as well as Article 62 of the Vienna Convention on Treaties confirmed that the *rebus sic stantibus* doctrine can be invoked when the change of the circumstances resulted in "a radical transformation of the extent of the obligations still to be performed" and increased the burden of the obligations to be executed "to the extent of rendering the performance something essentially different from that originally undertaken."¹⁶⁶ It is evident that the 1932 agreements have already been executed and do not fall under this category.

Moreover, it is important to note that it is an established rule of international law accepted both by the ILC and the Vienna Convention that treaties fixing boundaries are excluded from the application of the principle *rebus sic stantibus* "in order to avoid an obvious source of threats to the peace."¹⁶⁷ According to the Vienna Convention, a fundamental change of circumstances "may not be invoked as a ground for terminating or withdrawing from a treaty if the treaty establishes a boundary."¹⁶⁸ Therefore, the case of the 1932 agreements is beyond the reach of the *rebus sic stantibus* doctrine.

8. ARTICLE 14 OF THE PARIS TREATY

Another source of disagreement between Greece and Turkey concerns the 1947 Paris Peace Treaty.¹⁶⁹ Article 14 of the Paris Treaty, in which Greece acquired sovereignty over the Dodecanese islands, repeated almost verbatim Article 15 of the Lausanne Treaty. There were two exceptions. The term "dependent islets" was replaced by the term "adjacent islets." The second exception concerned the island of Kastellorizo. According to the Lausanne Treaty, the island of Kastellorizo was incorporated into Italy without any mention of the islets adjacent to it. This caused the dispute between Italy and Turkey which eventually led to the first part of the 1932 treaty. In

165. Lauterpacht, 1933, pp.278-279.

166. *Fisheries Jurisdiction* (United Kingdom v. Iceland), 1973, p.21; see also Article 62 of the Vienna Convention on the Law of Treaties.

167. Brownlie, p.621.

168. Art.62, 2, of the Vienna Convention on the Law of Treaties.

169. Treaties of Peace with Italy, Bulgaria, Hungary, Romania and Finland, Paris, 10 February 1947, *UNTS*, Vol. 49, I, No. 747.

the 1947 Paris Treaty, the island of Kastellorizo was incorporated with the other group of the Dodecanese islands with which the adjacent islets were included. According to Turkey, during the negotiations of the 1947 Paris Peace Treaty the Greek proposal for a reference to the two 1932 agreements was not accepted and no such reference was included in the text of the treaty. Greece considers that it formally succeeded Italy and inherited the legal status of the Dodecanese islands.

The case of the Dodecanese islands constitutes a typical example of a partial succession of a state where one international person acquires part of the territory of another international person through cession. It is a well-established rule of international law confirmed by jurisprudence¹⁷⁰ and conventional law¹⁷¹ that *res transit cum suo onere*. Thus, all rights and duties arising from treaties of the predecessor state concerning boundary lines devolve on the successor state as well and from this point the Greek position concerning the 1932 agreements is well established.

Nevertheless, it is a fact that Greece tried in the Paris Conference to amend the draft Article concerning the Dodecanese islands by adding *inter alia* a reference to the 1932 agreements. The Council of Foreign Ministers of the Paris Conference was in consensus as to the cession of the Dodecanese islands to Greece due, first, to the Greek population of the islands and, second, to the Greek resistance to the Axis Powers.¹⁷² According to Article 12 of the Draft Peace Treaty with Italy, "Italy hereby cedes to Greece in full sovereignty the Dodecanese Islands."¹⁷³ Greece immediately presented amendments to this Article which referred explicitly to the names of the Dodecanese islands¹⁷⁴ and defined the limits of the "Dodecanese archipelagos" in accordance with the 1932 agreements: "The limits of the Dodecanese Archipelagos are those which are indicated by the Italian-Turkish Convention of 4 January

170. *Free Zones of Upper Savoy and the District of Gex*, (France/Switzerland), PCIJ Series A, No. 22, 1929, p.17.

171. Art.11, 12 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties.

172. Decision of 27 June 1946, "Paris Conference to Consider the Draft Treaties of Peace with Italy, Rumania, Bulgaria, Hungary and Finland," *Documents for the Plenary Session*, C.P. (Plen.) Doc. No. 32, p.14 (1946).

173. Draft Peace with Italy. *Rec.Doc.Conf.Paix1946*, Vol. IV, p.394.

174. C.P./Gen./Doc.1.J.1., *Rec.Doc.Conf.Paix1946*, Vol. I, p.474.

1932 and in the Italian-Turkish *Procès-Verbal* of Ankara of 28 December 1932.”¹⁷⁵

The Greek amendments were adopted unanimously by the Political and Territorial Commission for Italy at the Paris Conference.¹⁷⁶ This Commission also accepted a proposal of the British delegation which asked the Greek government to prepare a map indicating the maritime boundary based on the 1932 agreements and a text describing the course of the boundary.¹⁷⁷ At the request of the Commission,¹⁷⁸ the map and the text were presented to the Legal and Drafting Commission which examined and approved them unanimously subject to the proviso that they should be examined also by the Subcommittee of Naval Experts composed of the delegations of France, Britain, the U.S., the USSR and Greece.¹⁷⁹ The Subcommittee also adopted unanimously the map and the accompanying text based on the two 1932 agreements.¹⁸⁰ Despite the unanimous decisions of the various commissions, the recommendation to the Conference did not include the adoption of the text which referred specifically to the two 1932 agreements and of the map and the accompanying text which showed the course of the boundary.¹⁸¹ The final text of the Draft Treaty was accepted unanimously.¹⁸²

It may sound strange that the Greek amendments were accepted unanimously in all the levels of Committees in the Paris Conference and the result was that they were not incorporated in the text of the treaty. The explanation of this failure was the Soviet Union. The months before the signing of the Paris Treaty were marked by the continued Soviet pressure in the area of the eastern Mediterranean Sea.¹⁸³ In January 1946, the Soviet government de-

175. Political and Territorial Commission for Italy, *Rec.Doc.Conf.Paix1946*, Vol. II, Annexe II, p.68.

176. 28th Session of the Political and Territorial Commission for Italy, *Rec.Doc.Conf.Paix1946*, Vol.II, p.65.

177. C.P./I.T./P 42nd Session, *Rec.Doc.Conf.Paix1946*, Vol. II, p.112, II.

178. Decisions of the Commission on the Articles of the Draft Treaty of Peace, *Rec.Doc.Conf.Paix1946*, Vol.II, p.127.

179. Reports of the Legal and Drafting Commission, C.P. (J.R.) Doc. 42, Meeting of 5 October 1946, *Rec.Doc.Conf.Paix1946*, Vol.III, pp.373-374.

180. See C.P. Doc. 24, Report of the Political and Territorial Commission for Italy, art.12.

181. *Rec.Doc.Conf.Paix1946*, Vol.IV, pp.326-327.

182. 35th Plenary Meeting, 9 October 1946, *Rec.Doc.Conf.Paix1946*, Vol. IV, p.80.

183. For more, see Coufoudakis, *Greece in the Decade 1940-1950*, 1984, p.487.

manded, in the first meeting of the U.N. Security Council, that the Dodecanese islands be ceded to the USSR, without success.¹⁸⁴ In February 1946, Soviet Ambassador Rodionov approached the Greek prime minister and expressed interest in a naval base for the repair of Soviet vessels on one of the Dodecanese islands.¹⁸⁵ Later that year, the Greek deputy minister of foreign affairs announced to the Greek government that the Soviet Union wanted two bases in the Dardanelles and Bosphorus in order to give its consent for the annexation of the Dodecanese islands to Greece.¹⁸⁶ During the Paris Conference, the Soviet Union was very reluctant to agree with the Greek positions.¹⁸⁷ It is interesting to note that the Soviet Ukrainian delegation made a proposal which in fact assimilated the Dodecanese islands and Greece with the Axis states,¹⁸⁸ and it was the Soviet delegate who raised the issue of the non-registration of the December 1932 *procès-verbal*.¹⁸⁹ In other words, during the period of the growing tension between the East and the West, the Dodecanese islands were used by the Soviet Union as an instrument for attacks against Great Britain and the U.S.

The final text of the Paris Treaty did not satisfy Greece which was reluctant to sign it. Britain and the U.S. however, expressed the view that the Soviet Union was seeking to reopen the issue and pressed Greece to accept it.¹⁹⁰ The day of the signing of the Paris Treaty, Greece deposited an interpretative declaration that the islets which are adjacent to the Dodecanese

184. Woodhouse, 1968, p.257; Xydis, 1963, p.182.

185. Department of State Records, U.S. National Archives, 868.00/3-646, memorandum of conversation; see also similar "Proposal by Soviet Delegation" 22 July 1945, *FR: Potsdam II*, pp.1427-1428.

186. Telegram of Mr. Dragoumis, 1 May 1946, in *Dodecanese Islands—The Long Way to the Incorporation—Diplomatic Documents from the Archives of the Ministry of Foreign Affairs*, 1996, p.67.

187. *Dodecanese Islands—The Long Way*, 1996, pp.30-31; see also memorandum of the Greek prime minister, pp.63-65.

188. C.P./Gen./Doc.1.R.1., *Rec.Doc.Conf.Paix1946*, Vol.I, p.510, which proposed the total demilitarization of the Dodecanese.

189. 10th and 12th Meetings of the Legal and Drafting Commission, 3, 5 October 1946. An annex with the Soviet observations was included in the minutes of the 12th Meeting. "Paris Conference to Consider the Draft Treaties of Peace with Italy, Rumania, Bulgaria, Hungary and Finland," *Rec.Doc.Conf.Paix1946*, Vol. III, pp. 359, 363, 364, (1946); See also 28th Session of the Political and Territorial Commission for Italy, *Rec.Doc.Conf.Paix1946*, Vol.II, p.66.

190. *Dodecanese Islands—The Long Way*, 1996, p.32.

islands "comprend tous les ilots qui se trouvaient au moment de l'entrée de l'Italie en guerre sous la souveraineté de l'Italie" [comprised all the islets which were under Italian sovereignty the moment that Italy entered the war].¹⁹¹ No objection was raised by any of the other signatory states.¹⁹²

This Greek declaration has to be contemplated as a reservation, which is a "unilateral statement, however phrased or named made by a State, when signing...a treaty whereby it purports to exclude or to modify the legal effect of certain provisions of a treaty in their application to that State."¹⁹³ The Greek reservation which interpreted the specific provision of the treaty is valid towards the other signatory parties. Turkey did not participate in the Conference or in the Paris Treaty and therefore the reservation is for it a *res inter alios acta*.¹⁹⁴

Nevertheless, this does not imply that the two agreements are not any more valid. The fact that the two agreements were not incorporated in the Paris Treaty does not mean that these agreements were superseded by it. Nor does it mean that these agreements are not applicable any more. The terms of the two agreements are compatible with the Treaty which did not state that it superseded them.¹⁹⁵ Therefore, all the Italian rights connected with the Dodecanese islands and the boundary established by the preceding treaties and agreements, including the 1932 agreements, were unaffected and were transferred *en bloc* upon Greece.

9. DEMILITARIZATION AND CONDITIONS

As it concerns the Turkish argument that the "relinquishment of sovereignty is conditioned upon demilitarization" in the case of the Aegean islands, the following points have to be made. Although the issue of the demilitarization of the Aegean islands is not faced in this essay, the Turkish claims have to be examined more closely. It is true that the cession of a territory may be made on the fulfillment of a suspensive condition. There were many cases in

191. Theodorakopoulos, 1964, pp.489-490; see also Greek Law 423/1947.

192. On the transfer of responsibility over the Dodecanese islands, see Exchange of Notes between the Government of the United Kingdom and the Royal Hellenic Government Concerning the Transfer of the Responsibility for the Administration of the Dodecanese Islands, Athens, 31 March and 7 April 1947, *UNTS*, Vol.201, p.201.

193. Art.2.1 (d) of the Vienna Convention on the Law of Treaties.

194. See Economides, 1989, pp.162-165.

195. Lee Mikyoung, 1996, pp.14-15.

the past where a cession of territory was made subject to a plebiscite confirming the cession, especially by the Treaties of Peace after the First World War.¹⁹⁶ The same applied to treaties which entrust the determination of certain frontiers to a third party or to an international commission.

A very good example of a suspensive condition which was included in an international instrument constitutes the February 1914 Decision of the Six Powers to Greece and Turkey. According to this Decision, the actual possession of all the Ottoman islands of the Aegean Sea by Greece "ne deviendra effective que lorsque les troupes grecques auront evacuer les territoires assignés a l'Albanie...de même que l'île de Saseno" [will not be effective until the Greek troops evacuate the territory which was assigned to Albania...as well as the island of Saseno].¹⁹⁷ Greece accepted this decision and evacuated the territory of Northern Epirus in order to get sovereignty over the Aegean islands.¹⁹⁸

The 1947 Treaty did not contain any suspensive condition according to which the relinquishment of the sovereignty over the Dodecanese islands was subject to its demilitarization. The fact that the demilitarized status of the islands is contained in the article establishing sovereignty over them does not automatically render demilitarization a suspensive condition for sovereignty, as Turkey claims. These conditions are formulated with a more precise and accurate manner and are not left to be interpreted, especially by non-signatory states.

The 1947 Treaty did not contain any similar clause. Furthermore, it would be an exaggeration if not a legal paradox to claim that it can be interpreted as having a retrospective effect in case the Dodecanese islands were to be militarized after the conclusion of the Treaty. Apart from the legal aspects of the specific 1947 Paris Peace Treaty, the Turkish attitude of questioning the Dodecanese islands' territorial settlement is a direct threat to regional stability and peace, since it disregards a state of affairs long since in existence and runs counter to the inviolability of frontiers according to the spirit of the

196. See for instance the Treaty of Peace between the Allied and Associated Powers and Germany, Versailles, 1919, art.34 (Eupen and Malmedy), art.49 (Saar), art.88 (Upper Silesia), art.94 (Schleswig).

197. See Kondis, 1976, pp.119-122; Saseno or Sason island lies in the Adriatic Sea.

198. Greek Reply to the 14/15 February 1914 Note of Austria-Hungary, France, Germany, Great Britain, Italy and Russia Respecting the Aegean Islands, Athens, 8/21 February 1914, *Strupp*, p.234.

1975 Helsinki Final Act. This Act ratified "the frontiers in Europe as they emerged from the war and as they exist today."¹⁹⁹

10. BEHAVIOR AFTER THE PARIS TREATY

According to a Turkish *note verbal*, in the aftermath of the Paris Treaty Greece approached the Turkish government twice and proposed talks "with a view to exchange letters between the two governments ascertaining the validity" of the two 1932 agreements.²⁰⁰ In a later document, the Turkish Foreign Ministry claimed that Greece made "four demarches to Turkey in 1950, 1953, 1955 and 1956—two of which were notes-verbales."²⁰¹ The Greek Foreign Ministry, in answering the Turkish note, claimed on its part that the investigation in its "historical archives has not revealed the existence of any formal correspondence of 1950 or 1953, nor at any other time," inviting Turkey to talks with a view to confirm the validity of the two agreements.²⁰²

Since access to the historical archives of the Foreign Ministries of the two countries is prohibited the examination of the claims of both countries is impossible. Under these circumstances, it is important to cite and try to draw conclusions from the views of the officials of the Legal Departments of the two Ministries of Foreign Affairs, Professors Economides and Pazarcı. Thus, it seems that Turkey asked for the confirmation of the two Agreements in 1949. Greece accepted the idea of exchanging letters of a purely declaratory nature confirming the validity of the two Agreements. For unknown reasons this initiative was never carried out.²⁰³

What can be affirmed is the existence of two verbal notes which were addressed to the Turkish Ministry of Foreign Affairs from the Greek Embassy in Ankara on 3 June 1955 and on 19 October 1956.²⁰⁴ On 4 December 1954, the military attaché of the Greek Embassy in Ankara discussed with officers of the Turkish Army Staff the maritime boundaries between the two coun-

199. Russell, *AJIL*, 1976, p.249.

200. 2nd Turkish *note verbale*, 29 January 1996.

201. "Legal Backgrounder on the Kardak Crisis in a Nutshell," *supra*, fn. 7.

202. 2nd Greek *note verbale*, 16 February 1996.

203. Economides, *RGDIP*, 1997, p.344; Pazarcı, *RGDIP*, 1997, p.374.

204. No. 1638/3-6-1955 and No. 2672/19-10-1956. Photocopies of the two verbal notes were kindly offered by the Legal Department of the Greek Ministry of Foreign Affairs.

tries. During this meeting, the participants discussed the necessity of having a maritime boundary between the two countries in the north of the Dodecanese islands.²⁰⁵ As a result of this meeting, Greece addressed the first *note verbale* to Turkey in 1955 in which it proposed that the task of the drawing of the maritime boundaries between the two countries "au nord du Dodécanèse" [in the north of the Dodecanese] should be assigned to an *ad hoc* mixed Committee.²⁰⁶ Seventeen months after this note, a second verbal note was addressed to the Turkish Foreign Ministry asking for a response to the proposal for the drawing of the boundaries "au nord du Dodécanèse" which despite various verbal reminders remained unanswered.²⁰⁷ Thus, it seems that in the years between 1954-1956 the outstanding boundary question between the two countries was the drawing of the maritime frontiers in the area in the north of the Dodecanese. Nevertheless, there is a disagreement between the two scholars as to the exact meaning of the expression "au nord du Dodécanèse". Pazarci claimed that the Greek note referred to the northern part of the Dodecanese islands group, because Greece did not consider the December 1932 *procès-verbal* as valid.²⁰⁸ Economides maintained that the areas in question were the maritime spaces in the north of the Dodecanese islands and the starting point of the new delimitation was to be the end of the December 1932 boundary.²⁰⁹ In relation to these views it has to be noted that the January 1932 agreement applied only to a very limited area on the southeast of the Dodecanese, between Kastellorizo and the Anatolian coast. It is very difficult to see how this limited area can be considered as the south of the Dodecanese whereas the area covered by the December 1932 *procès-verbal*, which comprises almost all the Dodecanese group of islands, can be described as the northern part. Therefore, the view expressed by Pazarci does not seem very accurate.

Moreover, Turkey had the chance to contest the validity of the two agreements in 1950 when the frontiers of the Athens-Istanbul FIR were agreed. Turkey accepted, in the Regional Air Navigation Agreement of the Second Middle East Regional Air Navigation Meeting which was held in Istanbul in 1950, that the border line of the two FIRs coincides in the Aegean

205. Economides, *RGDIP*, 1977, p.344.

206. Verbal Note No. 1638/3 June 1955.

207. Verbal Note No. 2672/19 October 1956.

208. Pazarci, *RGDIP*, 1997, p.374.

209. See *supra*, fn.203; Economides, [2] *RGDIP*, 1997, p.387.

with the Turkish western frontiers in the area.²¹⁰ For that reason, Greece and Turkey submitted the coordinates of their frontiers in the area. Both coordinates totally coincided and in the area of the Dodecanese islands were in fact those which were drawn in accordance with the two 1932 agreements.²¹¹ The Recommendation concerning the two FIRs and the Report of this meeting were unanimously accepted by the ICAO Council on 14 December 1952. A map showing the limits of this area was attached in the Europe Air Navigation Region in 1952 without any objection being raised on behalf of Turkey.²¹²

Another chance Turkey had to contest the validity of the two 1932 agreements was during the session of the Council of Europe concerning the Law of the Sea in Palermo in 1983. The Greek delegation referred *expressis verbis* to the validity of the two agreements in the presence of the Turkish delegation, which consisted of Professor Guney and the director of the Legal Department of the Turkish Ministry, Husseyin Pazarcı. The Turkish delegates did not challenge the Greek views.²¹³

Finally, it has to be noted that the maps which were presented by Greece to the ICJ during the *Aegean Sea Continental Shelf* case expressly mentioned that, whereas the dots limiting the lines of the Greek and Turkish territorial waters were drawn in accordance with the principle of the median line, "south of Samos island, the line is drawn according to the Italy-Turkey bilateral *procès-verbal*, 1932, and the Paris Convention of Peace, 1947." These maps were widely circulated during that period and they have been published by the ICJ without any reaction on behalf of Turkey.²¹⁴

210. Final Report of the rules of the Air Traffic Control Committee, Recommendation 1, 2nd Middle East Regional Air Navigation Meeting (Istanbul, October-November 1950), ICAO Doc.7055, MID/2-RAC.

211. Yokaris, 1996, p.57.

212. Map No. 7 of the Europe Air Navigation Region, attached to the Third Report to the ICAO Council in 1952.

213. The session took place between 3 and 5 November 1983. This information was made known to the author by Dr. Halkiopoulos who was the Greek representative.

214. See attached map in the Pleadings of the *Aegean Sea Continental Shelf* case, p.20.

11. ACTS OF SOVEREIGNTY

The existence of "gray" areas in the Aegean and the legal regime of the Aegean islands, which referred *inter alia* to the Imia/Kardak islets, has been analyzed through the light of the relevant international legislation. This last part will examine some issues related exclusively to the Imia/Kardak islets. Although treaties of cession are the most unequivocal way for a state to relinquish all its territorial claims to a territory,²¹⁵ the value of acts of sovereignty, if any, over Imia/Kardak and the question of preponderance of evidence related directly to the possession of these islets also have to be examined.²¹⁶ The effective exercise of public power by a state over the territory in question can be decisive in a case in which there is no title over a territory deriving principally from treaty provisions, unilateral recognition, uncontested possession (prescription) or occupation. Although Imia/Kardak do not fall into this category, it is interesting to appraise "the relative strength of the opposing claims to sovereignty" over the two islets.²¹⁷

Particular importance has to be attached in this regard to the determination of the date up to which the exercise of this sovereignty must have remained uncontested. The so-called critical day is the day of the outbreak of the immediate dispute leading to the contest of sovereignty.²¹⁸ The critical day is used in order to give the parties the ability to prove their continuous and uncontested exercise of sovereignty from which rights may be derived: "such possession should be uninterrupted and uncontested...such possession should also have lasted up to the moment when the dispute...took place."²¹⁹ This day is not to be considered, however, if it was merely the conclusion of a long period during which the frontier dispute had continued.

The theory of the critical date involves...that whatever was the position at the date determined to be the critical date, such is still the position now. Whatever were the rights of the parties then, those are still the rights of the parties now. If one of them still had sovereignty, it has it

215. *Case of German Repatriations under Article 260 of the Peace Treaty of Versailles*, 1924, *International Arbitral Awards*, Vol. 1, pp.429 and 443.

216. *Minquiers and Ecrehos*, ICJ Reports, 1953, p.52.

217. *Minquiers and Ecrehos*, p.67.

218. See *Island of Palmas arbitration*, 1928, RIAA, Vol. 2, p.845; *South-Eastern Greenland case*, PCIJ, 1933, p.45.

219. *Meerauge arbitration*, (Austria/Hungary), 1902, *Revue Générale de Droit International Public*, Vol. 38, 1906, p.207.

now, or is deemed to have it. If neither had it, then neither has it now...The whole point, the whole *raison d'être* of the critical date rule is, in effect, that time is deemed to stop at that date. Nothing that happens afterwards can operate to change the situation as it then existed.²²⁰

In the case of Imia/Kardak, this day is either the day that the Turkish bulk carrier ran aground on one of the islets or the day that the Greek Embassy rejected the Turkish *note verbale* wherein it was asserted that the islets of Imia constitute part of the Turkish territory. Before that date, there was no contest between the two countries concerning the sovereign rights over the Imia/Kardak islets. All the acts which took place thereafter, the war of flags, the landing of Greek and Turkish troops in January 1996 and their mutual withdrawal, the incidents between Greek and Turkish coast guard cutters, the overflying of Greek helicopters, etc., are insignificant from the point of view of the continuance of the existence of either Greek and Turkish sovereignty.

The examination of the relative strength of the acts of both states has to start from an argument that has been used by both Turkey and Greece. In a *note verbale*, Turkey claimed that, apart from legal arguments and documents, "for years Turkish fishermen have engaged in fishing activities on and around these rocks and...Turkish vessels have navigated through the waters surrounding them."²²¹ On the other side, Greece has also claimed that "Greek fishermen fished regularly in the waters surrounding these islets, and Greek shepherds are the owners of the goats that graze on the islets."²²² Also, it claimed that members of the Greek Bird Society had explored the two islets twice in April and June 1995.²²³ Nevertheless, acts of individuals by themselves are not considered in international law as substitutes for the display of state sovereignty. Unless authorized in advance or subsequently ratified, "the activities of individuals can be neither attributed nor imputed to the state whose nationals they are"²²⁴ and, thus, fishing, navigation, bird watching or

220. Sir Gerald Fitzmaurice, ICJ Pleadings in the *Minquiers and Ecrehos* case, Vol.II, p.64.

221. 2nd Turkish *note verbale*, 29 January 1996.

222. "Turkish Foreign Policy and Practice as Evidenced by the Recent Turkish Claims to the Imia Rocks," published on the World Wide Web site of the Greek Foreign Ministry (<http://www.mfa.gr>).

223. "Greek and European Union Scientific and Ecological Programs Concerning the Imia Islets," published on the World Wide Web site of the Greek Foreign Ministry (<http://www.mfa.gr/foreign/bilateral/ecoen.htm>).

224. Schwarzenberger, *International Law in the Twentieth Century*, 1969, p.295.

other similar activities are insignificant. The case of the shepherds may be different to the extent that these people leased the land from the Greek state or another state authority.

What is important for the claim of sovereignty is the display of state authority. According to the PCIJ, this display involves two elements, "the intention and will to act as a sovereign and some actual exercise or display of such authority."²²⁵ The only evidence of the display of authority which is showed by Turkey was included in its first *note verbale* according to which the Imia/Kardak islets "had been recently registered in the Registry of Deeds of the Turkish province of Mulga."²²⁶

Nevertheless, this registration which may be considered as the Turkish "intention and will to act as a sovereign" was not followed by any actual exercise or display of this authority according to the evidence furnished by Turkey. Moreover, Turkey itself considered that the inclusion of the Imia/Kardak islets in Greek Law 518 of January 1948 is "a national legislation" which "entails no legal consequences in international law."²²⁷ The Turkish position concerning the Greek law is in contradiction with the invocation of the registration of Imia/Kardak in the Turkish Registry of Deeds and, according to the principle *allegans contraria non est audiendus*, a State cannot affirm at one time and deny at another.²²⁸

It is also interesting to note that in 1964 Turkey adopted a system of straight baselines along its coasts.²²⁹ All the 60 islets which are lying within the 3 mile zone along the Aegean coasts were used as basepoints or were included within these baselines. The Imia/Kardak islets were not incorporated within these baselines.²³⁰

225. *South-Eastern Greenland case*, PCIJ, 1933, pp.45-46.

226. Information published on the World Wide Web site of the Greek Foreign Ministry (<http://www.mfa.gr/>).

227. Turkish press release dated 30 January 1996 on the position of the Turkish government regarding the Kardak Rocks.

228. Cheng, 1987, pp.141-149.

229. See *supra*, p.15, fn.52.

230. See Turkish Map Nr. 8003 of 17 May 1965; Economides, *RGDIP*, 1977, p.347, Economides, [2] *RGDIP*, 1977, pp.387-388. But see Pazarcı who stated that he did not find any evidence of the existence of any decree excluding the Imia/Kardak from the Turkish straight baselines, Pazarcı, *RGDIP*, 1977, p.376.

On the other side, Greece provides some evidence of the display of its authority. Immediately after the incorporation of the Dodecanese islands into Greece, Greek Law 518 of 1948 included the two islets in the District of Kalymnos. In 1965, 1975, 1980, 1984 and 1991, the two islets were repeatedly visited by the Greek Geographic Service and were cartographed and included as one of the trigonometric points in the official Greek maps. A fact which is of extreme importance is that in 1975 the Geographical Unit of the Greek army erected a cement pile as a trigonometric marker on the western and larger of the two islets. On this pile, which has been there ever since, a plate has been built with the sign and the name of the Geographical Unit of the Greek army.²³¹ Between 10 and 20 July 1986, the two islets were visited by a team of the Geographical Unit of the Greek army which stayed continuously on the islets without any hindrance for all that period.

The question is whether the above-mentioned exercise of sovereignty can be considered as enough evidence for the display of state authority. Jurisprudence and theory give an affirmative answer due to the nature of the two islets. Thus, in the *Island of Palmas* arbitration, it has been stated that

although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved...²³²

According to Professor Brownlie, "it is generally admitted that slight activity will suffice in the case of uninhabited or remote areas,"²³³ a view affirmed by Professor Bowett who wrote that "the smaller, the more remote, the less inhabited, the less important the islands, the less governmental activity will be required."²³⁴ Thus, it can be considered that, in the remote and uninhabited islets of Imia/Kardak, the above-mentioned Greek state activity can be regarded as enough assertion of sovereignty.

Special attention also has to be shown regarding the fact that since 1984 Greece has been engaged in ecological research activities on the Imia/Kardak islets through national and European Union projects. The area of Imia/Kardak has been included since 1984 as a wildlife preservation area in the European

231. This marker has a round shape and is 1.08 m. high (information provided by the Geographical Unit of the Greek army).

232. *Island of Palmas* arbitration, 1928, *RIAA*, Vol. 2, p.889.

233. Brownlie, 1990, p.144.

234. Bowett, 1979, p.52.

Community Program CORINE funded by both Greece and the EEC.²³⁵ Also, in the framework of Community Directive 92/43 and the network of ecologically sensitive and protected areas called NATURA, Greece submitted 296 regions which were automatically placed under Greek and EEC/EU environmental protection programs. One of these areas included the Imia/Kardak islets.²³⁶ In relation to these programs, it is interesting to note that the U.S. claimed in 1974 that the administration of the U.S. Wildlife Refuge System on the Howland, Baker and Jarvis islands in the Pacific Ocean constituted sufficient occupation.²³⁷

Thus, it can be concluded that especially in the case of Imia/Kardak Greece has an interesting record of state activities. If there were no legal title over the two islets, these activities could constitute enough ground for the invocation of the *animus occupandi* and consequently of the Greek sovereignty over them. On the contrary, Turkey does not possess any similar evidence of the actual exercise or display of state authority.

12. CONCLUSION

It may come as a surprise that the total Turkish argumentation in connection with the existence of "gray" zones of sovereignty in the Aegean Sea and the dispute over the Imia/Kardak rocks is practically totally unfounded in the field of international law. For that reason, the January 1996 incident is a landmark in the recent legal and diplomatic history of the two countries. In the years between 1973 and 1995, the disputes between the two countries involved problems which concerned undelimited zones such as the continental shelf, air-traffic control and rescue zone settlements and the possibility of the extension of the Greek territorial waters to twelve miles. The dispute over the Greek national airspace, the only dispute which was related directly to a part of Greek sovereignty, is a case where both countries can present valid arguments based on international law.

The Imia/Kardak incident is the first occasion that Turkey has laid claims on Greek territory. Thus, it is important to note that almost all of these

235. The Imia/Kardak islets are included in the area "Islands Arkoi and Leipsoi" which covers an area of 30 sq. km. and includes 42 islets.

236. The area of Lipsi, Arki, Agathonisi and islets under the registration number A42100010.

237. *Digest of U.S. Practice in International Law*, 1975, pp.92-94.

claims are not based in international law. Some of the Turkish arguments may sound logical. Nonetheless, the idea behind them eliminates in fact the dispute from the domain of law. The Lausanne Treaty inaugurated a settlement between Greece and Turkey that was more lasting than any other which followed the First World War. What Turkey is doing now is asking for a change in the legal status quo.

The arguments used give the impression that the first step of the Turkish government was to decide to make a territorial claim and the second step was to ask lawyers and experts to find some legal or at least logical reasons for this claim. Thus, it is not without significance that, as has been revealed in the Turkish press, the Turkish ambassador in Rome informed the Turkish Foreign Ministry about the correspondence between Italy and Turkey after the two 1932 agreements and suggested that Greek sovereignty is indisputable. According to the Turkish press, the memorandum of the Turkish ambassador was destroyed.²³⁸ The view that something went wrong during the hours of the crisis was also confirmed by Turkish Prime Minister Mesut Yilmaz who succeeded Mrs. Ciller and accused the bureaucrats of the Foreign Affairs Ministry that in the case of Imia/Kardak "they took the place of government and formed policy."²³⁹ Despite these admissions, Turkish foreign policy did not change.

Of course, it is beyond the scope of this work to investigate what was in the minds of the Turkish officials when the Imia/Kardak incident started. What is important to note is that, concerning the existence of "gray" zones of sovereignty, it is evident that, with the Lausanne Treaty, Turkey renounced all its rights over all the islands which are more than three miles from the Anatolian coasts. Especially in the case of the Imia/Kardak islets, if the issue in question is which of the two countries has the better title it is evident that Greece is a successor of the Italian rights over the islets which were confirmed by the 1932 settlement. Moreover, Greece exercised occupation over Imia/Kardak for years until the time that this occupation was disputed by Turkey in 1996. Therefore, Greek sovereignty over Imia/Kardak as well as over the other islands asserted by Turkey as belonging to the "gray" areas is indisputable vis-à-vis Turkey which does not possess any title at all.²⁴⁰

238. See article of Mr. Gunery Civaoglu, *Milliyet* (Istanbul newspaper), 28 March 1996.

239. Mr. Yilmaz's speech in the Turkish parliament, Reuters, 17 April 1996.

240. For more, see *Borders, Sovereignty, Stability*, 1996, pp.9-11.

12. Certain Legal Aspects of the Greek-Turkish Conflict

1. THE ARGUMENTS OF THE PARTIES AND THE CHANGES IN THE LAW OF MARITIME DELIMITATION

(a) *Contradictory Norms*

Some twenty-four years elapsed between the first case on the delimitation of the continental shelf in the North Sea and the maritime delimitation in the Greenland Sea. In the meantime, many aspects of the law of maritime delimitation were clarified, others were simply ignored and some were abandoned. It can validly be argued that, despite the fragmented nature of the conclusions of the courts, the basic trends of the case law are clearly distinguishable. Although it would be wrong to pretend that the problem of the delimitation of the continental shelf of the Aegean Sea can be resolved practically under the present state of political relations between Greece and Turkey, it is nevertheless important to evaluate the positions of each party in relation to the past and present trends in maritime delimitation law.

The problem in the Aegean was created because of the potential oil fields in the area. The vague terminology and the contradictory rules of the delimitation law offered the justification for different interpretations. When, in 1974, the conflict over the Aegean continental shelf started, there were two different versions of the law of maritime delimitation: the 1958 treaty and the *North Sea* cases judgment. The 1958 Geneva Convention used the 200-meter isobath and the exploitability criterion in order to determine the continental shelf. The judgment in the *North Sea* cases conceived the continental shelf "in a geological and topographical sense,"¹ namely, as the natural prolongation of the land territory into and under the sea.²

The term natural prolongation was extensively used by Turkey during the first period of the Aegean conflict. This did not mean necessarily that Greece had little or no continental shelf in the physical sense and, therefore,

1. *Jan Mayen* case, Sep. Opinion Oda, §58.

2. See *supra*, pp.80-82.

the concept of natural prolongation clearly disadvantaged it. On the contrary, the physical circumstances were the same on both sides of the Aegean Sea. The reason that Turkey preferred to use arguments based on natural prolongation was the existence of one legal and one "physical" determination concerning the delimitation of the continental shelf. The 1958 Geneva Convention accepted that, in the absence of an agreement, the rule for the delimitation was equidistance or a median line, unless another boundary was justified by special circumstances. Although there were problems as to whether special circumstances would have to meet any legal criteria, the act of delimitation was mainly a legal-political act. The 1969 ICJ suggestion of dividing the shelf

in such a way as to leave as much as possible to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other,³

changed the situation. First of all, it did not offer any concrete rule for the delimitation of the area. Second, it introduced a new concept that was totally different from the conventional one, which implied that lawyers have to listen to the facts of nature in order to determine the exact course of a boundary. In the Geneva Convention, the principle which was played a decisive role was proximity to the coast. The 1969 judgment was silent on two questions: (a) what really constituted the natural prolongation of the land territory of each state, and (b) how far did this natural prolongation extend without encroaching upon the natural prolongation of the other state. Everything was based upon the determination of an ambiguous term related to nature. As the *Tunisia-Libya* and, later, the *Libya/Malta* cases showed, the meaning of natural prolongation could be interpreted in many ways. It could be understood as relying on facts of geology or geomorphology, or on the natural division of continental margins or tectonic plates.⁴ In the case of the Aegean Sea, there is a single continuous continental shelf without any natural precise lines of separation. Therefore, both parties could claim an equal title in the disputed areas.

In general, the *North Sea* cases left the door open to many contradictory interpretations. For example, proximity was rejected by the Court as not playing any role at all. However, to make things even more confusing, the ICJ expressed the view that, in case the delimitation left an overlapping area, this

3. *North Sea*, §101, C.1.

4. *Tunisia-Libya*, § 38, 52-60; *Libya/Malta*, §38.

had to be divided equally between the parties.⁵ Turkey tried to capitalize on the 1969 case. As has been observed, "in each case there were a number of irregularities of structure or relief, some of which were cited by one party in support of a natural boundary, others by the opposing party." The nature of the Aegean Sea offered a very good opportunity for these interpretations.

Related to the problem of natural prolongation was the entitlement of islands to maritime zones and especially to the continental shelf. The 1958 Geneva Convention clearly favored Greece since it accepted that islands were on an equal footing with continents in relation to their ability to possess a continental shelf. The new term, natural prolongation, used by the ICJ did not contain any reference to the natural prolongation of islands. This was natural since there were no islands in the delimitation area in the *North Sea* cases. Nevertheless, this was problematic for the Aegean Sea. Would it be possible to say that according to natural criteria the islands have a natural prolongation of their own? The answer is undoubtedly yes if we refer to islands such as Easter island in the Pacific Ocean, which is totally isolated and distant from continents. Nevertheless, in areas such as the Aegean, this was not very clear and, since there was no reference to the natural prolongation of islands by the Court, it was possible to hold that this term implied that islands could be mere protuberances of the natural prolongation of the nearby continental shore. That is the reason that law has to be as precise as possible and has to avoid a case-by-case approach.

This does not mean that the Geneva Convention was free of vague terms. It is important to mention that it did not offer the slightest clue as to what constitutes special circumstances. Hence, the Aegean Sea islands could be considered as presenting a case of special circumstances and therefore as not being eligible to possess the appropriate maritime zones. However, there is an important difference. It may be true that the 1958 Convention referred to special circumstances, but this reference was indicating a deviation from the rule which was the equidistance line. The 1969 decision did not have any concrete rule. On the contrary, it referred to natural prolongation and the need to achieve a result in accordance with equitable principles. Under the specific circumstances of the *North Sea* cases, the reference to equitable principles was enough for the Court. It was addressing general principles and rules applicable to the delimitation and did not draw any boundary. Unfortunately, this was not enough for the Aegean Sea. The term "equitable principles"

5. *North Sea*, §101, C. 2.

could be understood as a corrective rule within law or as an independent theory aiming to correct inequities. Of course, it is true that the Court held that the "decision finds its objective justification in considerations lying not outside but within the rules,"⁶ but it also used the words "reasonable" and "unreasonable" which have a more subjective meaning.⁷

The geographical context of the Aegean does not offer the perfect background for an equal/reasonable treatment of both countries. Thousands of islands are scattered all over the place, which in their totality belong only to one of the two riparian states, Greece. If equity is understood as an independent principle, which does not have to be applied only when the result of the rule of law leads to an inequity, then it could be used to correct the inequities of nature or political history. This is the way that it was interpreted by Turkey. On the other hand, the Greeks preferred to insist upon the general rule of law without examining the possible existence of some abnormal or exceptional situations.

A second point which could be argued is that the ICJ in the 1969 case clearly held that the first three articles of the 1958 Geneva Convention were crystallizing rules of customary international law. Article 1b speaks of the term continental shelf as referring to the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands. From this point of view, there were no grounds for misunderstandings. However, the existence of so many vague, obscure and undefined terms could be easily exploited to justify different aims since each one of the parties concerned could rely on different notions. To summarize the reasons for the differing views of the parties, it can be said that, in 1974, what was missing from the rules of maritime delimitation was predictability. The lack of general, objectively identifiable rules was more than apparent in this first period.

(b) No Foreseeable Recourse to Third-Party Delimitation for the Aegean

The long march of the law of maritime delimitation passed through various phases. The characteristic of the period after the *North Sea* cases is that jurisprudence tried to develop a whole complex of legal norms which was almost totally separate from the conventional rules. It is most regrettable that, although there was a unique opportunity to redefine the content of the ways of delimitation on the level of treaty provisions, this opportunity was

6. *North Sea* §88.

7. *North Sea* §24, 90, 97; see also Salmon, 1981, p.447.

lost along with the disappearance of the Geneva rule of equidistance and the jurisprudence norm of equitable principles from the terminology of the LOSC. The product of this divergence of principles and methods in delimitation were Articles 74 and 83 of the LOSC, which adopted a neutral terminology in order to save UNCLOS III. The result was that the case law continued its march in the field of maritime delimitations without any guidance as the Court itself admitted.⁸ Quite paradoxically, the courts seem to bridge the gap by returning halfway to the treaty rules of the Geneva Convention.

One of the most important achievements of this turnover was the abandonment of the natural prolongation concept in a physical sense. This concept faded over the years. It was in the *Tunisia-Libya* case that the Court admitted that the continental shelf was basically a legal term which pursued its own development despite its "natural" origins.⁹ In the *Jan Mayen* case, the ICJ re-confirmed the view it expressed in the *Libya/Malta* case that within 200 miles from the coasts natural prolongation has no role to play at all.¹⁰ Therefore, in the spatially limited areas of the Aegean Sea natural prolongation does not play any role at all. Undoubtedly, this was a welcome sign for Greece, although Turkey had abandoned the natural prolongation claim long before this.

"Equity" is quite a controversial term, at least in the practice of the courts. Despite its significance, it is not yet easy to describe what the "clear body of equitable principles" is that permits the objective of the equitable result to be attained.¹¹ The two conceptions of equity, the corrective one and the one that is independent of any rule of law, are still in conflict with each other. However, it has to be noted that the trend towards viewing the notions of equity beyond any principles of law was noticeable only in the *St. Pierre and Miquelon* case. On the contrary, the ICJ, in the last two cases, preferred to rely on equity within the law which displays "consistency and a degree of predictability."¹² Unfortunately, the law of maritime delimitation is "too full of contradictions for there not to be new variations the moment the next case comes before the Courts."¹³ It is hoped that the extraordinary delimitation of the *St. Pierre and Miquelon* case, which was equitable only in the eyes of the

8. *Tunisia-Libya*, §50.

9. *Tunisia-Libya*, §42.

10. See *supra*, pp.210-213, 287-289.

11. *Libya/Malta*, §76.

12. *Ibid.*, §45.

13. Weil, 1989, p. 179.

Court, will be a good example for courts to follow if they want to avoid equity as an independent force in the future. Another important development which leaves the door open to different interpretations is that of the frontal projection of the coasts. The problems created by this new notion were explored at length in a previous chapter. It remains to be seen how the two parties in the Aegean Sea conflict will use the rule that has emerged.

What is very important in the Aegean Sea conflict and the arguments of the parties is the gradual restoration of equidistance. It is true that the *North Sea* judgment did not totally dismiss equidistance. On the contrary, it accepted the usefulness of the median line method in the case of opposite states. Equidistance was really contested only during the debates at UNCLOS III which marked the gap between the two schools of thought or, more precisely, the two groups of states with opposing economic interests. Two developments were the consequences of this dispute. The first was practical, namely, the exclusion of equidistance from the terminology of the LOSC. The second development was psychological: the use of the equidistance method was regarded as excluding the application of equitable principles. Equidistance could not be accepted, even as a preliminary step, even when equitable principles practically required that it be accepted, especially when there was a need to divide the overlapping areas of the projections of two coasts.

Now, the trends are changing rapidly in favor of equidistance. Equidistance seems to be the starting point with regard to delimitation between opposite coasts. What is more important is that, as a result of the reasoning of the Court in the *Jan Mayen* case, equidistance is to be used under Article 6 of the Geneva Convention, Articles 74 and 83 of LOSC or customary law.¹⁴ This is an important finding because Turkey does not recognize it as relevant in the treaty provisions for the delimitation of the continental shelf. It also has to be noted that this development favors the Greek arguments which were consistently based upon the idea of the media/equidistance line. Therefore, it seems even more difficult for Turkey to accept a third-party delimitation of the continental shelf.

This conclusion is further strengthened by the treatment of islands in all recent cases. Islands were never considered as a mere continuation of mainlands. Furthermore, they were considered as having their own continental shelf platforms as well as other maritime zones. The islands of St. Pierre and Miquelon as well as Jan Mayen island were given continental shelves and

14. *Jan Mayen*, §51.

EEZs. Under the light of these developments, the Turkish claims that the Aegean islands can only have a six-mile territorial sea, which is a limited zone, are not very convincing. The possibility of a judgment regarding the continental shelf of the Aegean Sea is more distant than ever.

2. TWO QUESTIONS CONCERNING BILATERAL NEGOTIATIONS AND THE LEGAL/POLITICAL NATURE OF THE AEGEAN DISPUTE

Since the emergence of the Aegean Sea dispute, two important questions have occupied the two countries. The first concerns the obligation to conduct negotiations and reach agreement. This question was raised after 1975 at the Karamanlis-Demirel meeting in Brussels, where the submission of the continental shelf delimitation problem to the ICJ was agreed upon. The second question is related to the first one and concerns the legal or political nature of the Aegean dispute and, therefore, the competence of an international judicial organ to apply rules of international law in order to solve the problem. Both questions are still outstanding between the two countries.

(a) Obligation for Negotiation and Agreement between the Two States

Negotiations have been defined as a "process in which explicit proposals are put forward ostensibly for the purpose of reaching agreement on an exchange or on the realisation of a common interest when conflicting interests are present."¹⁵ Diplomatic negotiations are the most ancient as well as the most common method for settling international disputes. Moreover, they are one of the simplest means of settling state differences. Greece and Turkey were involved in negotiations during the late 1970s. These negotiations were focused almost exclusively on the Aegean continental shelf, whereas negotiations between 1987 and 1988 touched upon more general problems. During these two periods, no agreement was reached on any of the subjects that constitute the complex of the Aegean Sea question, with the exception of the eastern Aegean air routes and the establishment of a direct telephone line between the two prime ministers which could defuse crises such as that of March 1987. Moreover, the negotiations did not involve any change of policy on the part of either country in any of the problem areas. On the contrary, it was evident that a deadlock on the issues of the dispute had been reached and has remained ever since.

15. Ikle, 1964, pp.3-4; see also Gebrehana, 1978, pp.41-44.

The Greek view concerning negotiations is that Turkey does not really want to engage in meaningful negotiations. The negotiations in the past, which were held at all possible levels, between prime ministers, ministers of foreign affairs, ambassadors and legal experts, proved that it is almost impossible for the two countries to reach an agreement over the delimitation of the continental shelf which is the only legal problem that exists between them. Under these circumstances, and since the negotiations in the past proved meaningless, new negotiations could start only for the purpose of drafting a *compromis* to submit the problem of the delimitation of the Aegean continental shelf to the ICJ. However, even these technical negotiations have to be sincere and meaningful, otherwise they may create in themselves a new tense situation.¹⁶

According to the Turkish view, the two parties are under an obligation to engage in negotiations "with a view to realise an agreement and not simply to proceed to formal negotiations."¹⁷ Greece and Turkey "did not exhaust this way yet" because although "some negotiations were made...these were formal negotiations while waiting for the judgement of the Court."¹⁸ According to Suat Bilge, who was the Turkish legal expert in the negotiations just after the Bern Agreement in 1977, "there would have been a solution if the negotiations had lasted long enough. We negotiated only for five years...the Bern Agreement forbids both sides to hinder the negotiations."¹⁹ The views of the two countries regarding negotiations touch upon several important issues. The first problem is whether there is a general obligation which requires negotiation on all matters. In general, a state "cannot be compelled to enter into a collaborative arrangement and hence cannot be compelled to negotiate."²⁰ However, where the continuation of a dispute is likely to endanger the maintenance of international peace, there arises, according to Article 33 of the U.N. Charter, an obligation to seek a solution by *inter alia* negotiation.²¹ But, even in such a case, a refusal to negotiate a dispute "is justifiable, if at all, on an expressed preference for one of the other methods" specified in Article 33 for the peaceful settlement of international disputes, which includes *inter alia*

16. On the negotiations, see Rozakis, 1988, p.336; Ioannou, *Yearbook 1988*, ELIAMEP p.171.

17. Bilge, [2], in *The Aegean Issues: Problems and Prospects*, p.74.

18. *Ibid.*, p.75.

19. Bilge, in *The Aegean Issues: Problems and Prospects*, p.9,10.

20. Murty, 1989, p.509.

21. *Oppenheim*, p.1182, fn.5; Lall, 1966m, pp.5-9.

judicial settlement.²² Especially in the case of the Greek-Turkish conflict, the two countries are under a further obligation to "resume direct negotiations over their differences "since they were invited to do so according to Security Council Resolution 395 of 1976.²³ Thus, the two countries are obliged to get involved in negotiations, as they actually did on two occasions in the past.

The negotiations were discontinued because, according to the Greek side, it was evident that they could not reach an agreement. Thus, the second question that arises is whether it is permissible to discontinue the negotiations that have been initiated if an agreement cannot be reached. The PCIJ was careful to state that, although there is an obligation to enter into negotiations and pursue them as far as possible, "an obligation to negotiate does not imply an obligation to reach agreement."²⁴ The involvement of the two countries in negotiations did not imply that there would necessarily be an agreement. Agreement is simply a result of diplomatic negotiations and, according to the doctrine of liberty of contract, it is reached only by the free will of the states concerned.

Turkey accuses Greece of regarding involvement in formal negotiations as a kind of prior condition for application to the ICJ. It is true that, in the *North Sea* cases, the ICJ held that the "parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation."²⁵ The requirement of agreement was established by the ICJ in order to avoid "problems of opposability arising from unilateral delimitations."²⁶ It is equally true that the "judicial settlement of international disputes, with a view to which the Court has been established, is simply an alternative to the direct and friendly settlement of such disputes between the Parties."²⁷ During the period of the negotiations, the two parties

22. Murty, 1989, p.509; Merrills, 1991, p.26.

23. Period 4 of the resolution, see *supra*, pp.128-132.

24. *Railway Traffic between Lithuania and Poland*, PCIJ Series A/B, No.42, p.116; similar view expressed in the *Commission of the European Atomic Energy Community v.U.K. Atomic Energy Authority*, ILR, 44, p.418.

25. *North Sea*, §85(a); see "obligation for negotiating an agreement, *Lake Lanoux* arbitration, ILR, 1957, p.128.

26. *Jan Mayen* case, Sep.Opinion Shahabuddeen, Part I, (viii); *North Sea*, Diss.Opinion Tanaka, p.184; *Tunisia-Libya*, Diss.Opinion Oda, §60; *Gulf of Maine*, §87; *Libya/Malta*, Diss.Opinion Oda, §32-33.

27. *Free Zones of Upper Savoy and the District of Gex*, PCIJ Series A, No. 22, p.13; see also *Frontier Dispute*, ICJ Reports, 1986, §46.

"are under an obligation to conduct themselves so that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it."²⁸ However, all the diplomatic exchanges between Greece and Turkey during the two periods of negotiations were unproductive and a deadlock was reached. As the ICJ declared, "so long as both sides remain adamant...there is no reason to think that the dispute can be settled by further negotiations between the parties."²⁹

At this point, Turkey has expressed the view that the negotiations did not last long enough for an agreement to be reached. The question that arises is whether there is any obligation to pursue lengthy negotiations if the circumstances show that such negotiations would be superfluous. There is a long list of cases concerning this matter. In 1924, the PCIJ expressed the opinion that

the question of the importance and chances of success of diplomatic negotiations is essentially a relative one. Negotiations do not of necessity always presuppose a more or less lengthy series of notes and despatches; it may suffice that a discussion should have been very short; this will be the case if a deadlock is reached, or if finally a point is reached at which one of the parties definitely declares himself unable, or refuses, to give way, and therefore [there can] be no doubt that the dispute cannot be settled by diplomatic negotiation.³⁰

The PCIJ passage was cited and the view expressed in it was confirmed by the ICJ on several occasions.³¹ Thus, the period of negotiations does not have to be lengthy if "a deadlock was reached in the collective negotiations in the past and...no reasonable probability exists that further negotiations would lead to a settlement."³² Moreover, Greece claims that Turkey did not negotiate meaningfully. Although the same claim is made by Turkey, the Greek view is, at least as regards the reasons invoked for the termination of the negotiations, in accordance with international law. There is no obligation in international law to negotiate if "one party employs tactics which are incompatible with the principle of good faith, that is, tactics which show that he is not engaged in a

28. *North Sea*, §85(a); as to the general principles of negotiation, see also *Kuwait v. Aminoil* arbitration, *ILR*, 66, §70(i).

29. *South West Africa*, *ICJ Reports*, 1962, p.346.

30. *Mavromatis Palestine Concessions*, *PCIJ Series A*, No.2, 1924, p.13.

31. See *South West Africa* cases, (Preliminary Objections), pp.345-346; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, *ICJ Reports*, §55.

32. *South West Africa* cases, (Preliminary Objections), p.345.

genuine bargaining endeavour to reach an agreement by taking full cognizance of the claims of both."³³

The Greek side has expressed quite emphatically in the past that no negotiations can start until certain conditions are accepted by Turkey. Thus, the question is whether it is acceptable to put forward conditions for acceptance by the other party as a pre-condition for negotiations. International law distinguishes between issues of substance and of procedure.³⁴ If the demand concerns issues such as abstaining from provocative actions or the threat of force, as happened with the short-lived moratorium of 1982, it can be considered as legitimate. Not only do these requirements concern issues of procedure but, moreover, they are conducive to fair negotiation. On the contrary, conditions concerning issues of substance, which place the other party in a disadvantageous position during the negotiations, are incompatible with Article 33 of the U.N. Charter.

From this point of view, the Declaration of the 15 Ministers of the EU on 15 July 1996 is of extreme importance. The respect for international law, agreements and relevant international practice as well as for the sovereignty and territorial integrity of the EU member states and Turkey, the settlement of disputes on the basis of international law, the restraint and avoidance of any action liable to increase tensions, and the avoidance of the use or threat of force are considered nowadays as a *conditio sine qua non* for democratic states all over the world. They are, moreover, the principles on which the whole system of the United Nations is based. Their acceptance is by no means placing Turkey in a disadvantageous position. Thus, it is at least questionable that Turkey has refused to commit herself to these principles.

(b) The Legal or Political Nature of the Dispute and the Law/Politics Dichotomy

An issue related to that of negotiations concerns the legal or political character of the Aegean Sea dispute. In 1978, a Turkish ambassador in a letter addressed to the ICJ stated that:

"D'autre part, les échanges diplomatiques susmentionnés montrent à l'évidence que les questions en suspens entre la Grèce et la Turquie *sont de nature hautement politique*, mettant en cause l'équilibre délicat établi

33. Murty, 1989, p.514.

34. Ibid., p.512; see also Brierly who examines the non-discussable or negotiable issues during negotiations, *BYBIL*, 1944.

par le traité de Lausanne du 24 juillet 1923 et l'ensemble des relations territoriales et politiques des deux pays"³⁵

With this letter, Turkey invoked, and still does,³⁶ the argument that the Aegean dispute was incapable of settlement by the application of generally recognized rules of international law because the issue in question is the possible disruption of the balance achieved by the Lausanne Treaty in 1923, which is a political matter.³⁷ Therefore, the question is: What is a political dispute? The answer to this question is important because, if the dispute involves legal questions, then arbitration and judicial settlement have to be employed as they are most suitable for a peaceful settlement. On the other hand, if issues of fact and policy form the framework of the dispute, then negotiation, mediation, inquiry or conciliation, which are termed diplomatic means, are more appropriate to solve the difference.³⁸

As has been stated, "every international dispute is of a political character, if by that is meant that it is of importance to the State in question."³⁹ This political character was more than apparent in a series of judgments by the PCIJ as well as the ICJ, which, however, did not prevent these two courts from deciding upon these cases.⁴⁰ Furthermore, although it is a simplification to imply, in general, that international law is the key to all international relations,⁴¹ it is difficult to ignore its role in cases either of disputes concerning maritime boundaries, where there is a long practice of decisions, or of claims over territories, where there is a long list of international agreements which refer to them. A third element that cannot be disregarded is that, nowadays, international law tends to be a "complete" system covering the whole field of the rights and duties of states. Generally, gaps do not exist in international

35. Letter of Turkish ambassador to the Netherlands, 24 April, 1978, *Aegean Sea Pleadings*, pp.588-589, emphasis added.

36. See Bilge, [2], in *The Aegean Issues: Problems and Prospects*, 1989, p.76; Yoİga, in the same book, pp.142-143.

37. See also letter of the Turkish ambassador to the Netherlands, 10 October 1978, *Aegean Sea Pleadings*, pp.593-594, emphasis added.

38. See Merrills, 1991, p.81.

39. Lauterpacht, 1933, p.153.

40. See *The S.S. Wimbledon*, PCIJ Series A, No. 1; *German Interests in the Polish Upper Silesia*, PCIJ Series A, No. 6; *U.S. Diplomatic and Consular Staff in Tehran*, ICJ Reports, 1980; *Military and Paramilitary Activities in and against Nicaragua*, Jurisdiction and Admissibility, Judgment, ICJ Reports, 1984.

41. See Merrills, 1991, pp.236-242.

law.⁴² Especially in the case of the Greek-Turkish conflict, the ICJ held in 1978, beyond any doubt, that "the dispute between Greece and Turkey concerning the delimitation of the continental shelf of the Aegean is a legal dispute and therefore is particularly susceptible of being solved judicially".⁴³

A dispute involving two States in respect of the delimitation of their continental shelf can hardly fail to have some political element and the present dispute is clearly one in which 'the parties are in conflict as to their respective rights'It is clear from the submissions in the Greek Application and Memorial, as well as in the observations in the various Turkish diplomatic communications to Greece, that Greece and Turkey are in conflict as to the delimitation of the spatial extent of their sovereign rights over the continental shelf in the Aegean Sea. Thus, there are certain sovereign rights claimed by both Greece and Turkey, one against the other, and it is manifest that legal rights lie at the root of the dispute that divides the two States. The Court therefore finds that a legal dispute exists between Greece and Turkey in respect of the continental shelf in the Aegean Sea.⁴⁴

Despite this *dictum*, Turkey insists on the political character of its claims and refuses recourse to a third-party delimitation. It is true that the will of states can limit the jurisdiction of international tribunals. The right to determine the scope of jurisdiction is totally different from the rules of international law which exist independently of the will of each state. These rules are applied in a given case as long as rules of international law regulating a specific dispute exist. Juridical interest has been focused since the early stages of the doctrine of the continental shelf on questions "as to what was the legal basis on which any rights at all in respect of the continental shelf could be claimed, and what was the nature of these rights."⁴⁵ The answers to these questions were incorporated in international documents such as the Geneva Convention on the Continental Shelf in 1958 and the Law of the Sea Convention in 1982. Thus, laws exist which regulate the delimitation of the continental shelf and of maritime zones in general. The same applies to the Turkish territorial claims over the Aegean islets and rocks. The Lausanne and

42. Lauterpacht, 1970, pp.241-244.

43. Dipla, 1992, p.12. See also Michael, 1983, Vol.II, pp.28-31; Rozakis, 1988, p.295.

44. *Aegean Sea*, §31.

45. *North Sea*, §48.

Paris treaties, the Italian-Turkish settlement of 1932, judicial decisions concerning the interdependence of the main islands of archipelagoes with the tiny territories around them and the importance of the acts of sovereignty exercised especially over the Imia/Kardak islets offer an excellent legal ground for the settlement of any, if really there exists any, claim. From this point of view, the Aegean Sea dispute, although it involves political elements, is a legal dispute.

But to what avail? This conclusion turns a blind eye to the fact that Turkey does not recognize the legal character of the dispute, nor does it accept a judicial settlement, and there is no legal method available to convince it to change its attitude. If the Aegean Sea dispute is to be seen through subjective and simultaneously highly pragmatic considerations, then the situation is as follows. The Aegean continental shelf is an as yet undelimited area where, in certain localities, conflicting Greek and Turkish claims coexist. These overlapping claims question the rights of each country over these areas. Greece insists on its legal rights, while Turkey, recognizing the weakness of its legal case, seeks a settlement on the basis of equity or *ex aequo et bono* by claiming the political character of the dispute. Turkish claims over the Imia/Kardak islets and more generally over certain yet unspecified Aegean islands of small dimensions are totally groundless and against *bona fidae*. The menacing shadow of Turkish force lurking behind the legal views presented by Turkey gives them another value.

This does not mean that they are simultaneously political and legal problems because "the manner in which [the solution] is to be achieved will have serious political ramifications for both sides", as has been expressed.⁴⁶ Legal disputes "always have a greater or smaller political dimension."⁴⁷ The dispute is political from the Turkish point of view because Turkey "aims at a change of the existing situation rather than at a clarification of the existing law."⁴⁸ And as has been stated, "les différents d'ordre politique sont ceux dans lesquels l'une des parties demande la modification du droit existant" [the differences of a political nature are those in which one of the parties asks for the modification of the existing law].⁴⁹

46. Karl, in *The Aegean Issues: Problems and Prospects*, 1989, p.170.

47. Mosler, in *The Area of Justiciability*, 1984, p.415.

48. Mosler, *Judicial Settlement of International Disputes*, 1974, p.10.

49. Rousseau, 1973, p. 282, emphasis added. See also Dipla, 1992, pp.3-5.

There is no doubt that rules of law exist which regulate the issues that have been raised in the Aegean Sea dispute during the past twenty years, such as the question of Air Traffic Control (FIR), the breadth of the territorial sea, the extent of Greek national airspace or the militarization of the Aegean islands. Nevertheless, Turkey considers that all these problems, seen together, touch upon its own vital interests and therefore asks for a political rather than a legal settlement.⁵⁰ As a Turkish official said,

...we want to be sure that international law is completely on our side. If it is not completely on our side, if there are gaps, if there are possibilities of exploitation for other purposes then it looks like a gamble....We do not want to gamble, we want to be sure that international law is a hundred per cent on our side.⁵¹

And if it is not one hundred percent on the Turkish side? Then, the dispute is, according to the Turkish view, a political dispute. The question still remains: What is the nature of the Aegean Sea dispute? Greece will continue to insist on the legal character of the dispute. Turkey will continue to insist on its political character. The first of the countries that accepts either further negotiations or a judicial settlement will give, in practice, the answer to the question of whether the Aegean dispute is legal or political.

3. A FORMULA FOR THE EXTENT OF THE GREEK TERRITORIAL SEA

Although the purpose of this essay is not to prescribe solutions for the disputes between the two countries, there is going to be an exception. The main problem in the Aegean Sea as it stands today is the possible extension of the Greek territorial waters over the six-mile limit which has been established since 1936. Greece has many reasons to increase its territorial waters to twelve miles:

- First, the exercise of this right lies upon the state concerned, which can unilaterally determine its own limits within the prescribed length. As long as the territorial waters extend up to the twelve-mile limit, which is accepted to-

50. On the theory of the legal questions that touch upon the vital interests of a state and therefore constitute "no-man's land," see Achesson, *ASIL Proc.*, 1963, pp.13-18; on the law/politics dichotomy of legal questions, see McWhinney, 1991, pp.37-46.

51. Prof. Soysal, in "Concluding Remarks," in *The Aegean Issues: Problems and Prospects*, p.53.

day as a rule of customary international law, all the other states are obliged to respect the Greek delimitation.

- Second, the extension of the Greek territorial sea to twelve miles will "have a catalytic effect on the unresolved continental shelf delimitation" of the Aegean.⁵² The areas of the yet undelimited Aegean continental shelf will be reduced from 50% to 25%. This does not mean that all the areas that will remain high seas will be left to be delimited between the two countries. Most of this 25% of the high seas lies in areas which have never been contested by Turkey, more specifically, between Crete, the Peloponnese and the Cyclades islands, or south of Macedonia and east of Thessaly. Moreover, the continuous chain of Greek islands in front of the Anatolian coasts and the territorial sea belts around these islands will limit the maritime projection of the Turkish coasts in most places between the islands and the Turkish mainland coasts. Thus, with the exception of some gaps between Lemnos, Lesbos and Chios, the continental shelf dispute will be, in practice, resolved and the Turkish continental shelf will be confined in the areas between the eastern coasts of the Greek islands and the Turkish coasts. From the areas that have been contested by Turkey in the past, when in 1973 and 1974 it unilaterally declared the limits of its continental shelf, there will remain some fragments or pockets of high seas surrounded by Greek territorial waters. The only area that will remain significant will be the area between Lemnos, Lesbos and Chios.

- Third, the extension of the territorial waters will solve the "Greek paradox" of the ten-mile national airspace. Although the Greek legal views concerning this matter are quite well supported, it cannot be ignored that Greece is the only country in the world where the breadth of the national airspace extends beyond its territorial waters. The final solution to this problem will eliminate the possibility of an armed conflict in the Aegean because, since 1974, Turkey has systematically challenged the outer four miles of the Greek national airspace, and there have been a considerable number of incidents with human losses on both sides.

At the same time, the extension of the territorial waters may create a serious problem for Greece. Most of the belts of high seas which presently separate the Greek islands will cease to exist. The most important of these passages are the Caso passage between Crete and Kassos and the Karpathos strait between Karpathos and Rhodes in the southeastern Aegean; the Kythera strait between Antikythera and Crete in the southwest; and the belt between

52. Politakis, *I JourMCL*, 1995, p.507.

the Dodecanese islands and the Cyclades islands.⁵³ In this case, there will be no parts of high seas connecting the northern part of the Aegean Sea with its southern part or with the Mediterranean. The problem that arises in this case is that of the existence of numerous alternative straits. Is it possible that all of them may fall under the regime of international straits as described in Articles 34 to 44 of the LOSC? If the answer to this question is affirmative, then serious problems of security will arise for Greece. The passages between Euboea and Andros or between Cape Sounion and the north of the Cyclades islands which are presently part of the Greek territorial sea will be considered as international straits. It is for this reason that Greece made the interpretative declaration upon the signature of the LOSC, which was repeated upon ratification. Although this declaration seems to be accepted by many writers,⁵⁴ it is questionable what will happen in practice since it is doubtful whether the regime of international straits has acquired the status of customary international rules.

On the other hand, special attention has to be given to the Turkish fear that the extension of the Greek territorial waters will "seriously curtail" Turkey's access to the high seas in the Aegean and from thereon to the Mediterranean.⁵⁵ With the exception of the Mersin port in the Mediterranean, ships heading for all the other main Turkish ports, such as that of Izmir or of Istanbul, will have to navigate through Greek territorial sea. Even though the right of transit passage as it is described in the LOSC offers Turkey the competence to navigate without problems throughout the Aegean, it is understandable that it does not want to navigate through areas which are under Greek sovereignty. It is not only the fact that the Turks mistrust the Greeks, which is a mutually shared view. What's more is that Greece is the enemy *par excellence*. Greece is considered as the country which started the collapse of the Ottoman Empire in 1821 with the adoption of the "Great Idea" policy. Greece continuously expanded to the detriment of the Ottoman Empire. The Greeks were the soldiers who arrived in front of the gates of Ankara in 1921. Greece still follows an expansionist policy towards Turkey, as was revealed in the case of Cyprus and hinders the entrance of Turkey in to the EU. This is a highly emotional, not necessarily logical, attitude which has to be taken into consideration.

53. See also *supra*, p.8. See map 11.

54. Politakis, *HourMCL*, 1995, p.504, fn.19, 21.

55. "Legal Backgrounder on the Kardak Crisis in a Nutshell," *supra*, p.355, fn.149.

On the one hand, the geography of the Aegean and international law gives Greece the right to expand its territorial sea with all the consequences which were mentioned above. On the other hand, Turkish mistrust and suspicion disregards what international law prescribes in the Aegean in order to protect "Turkish interests." International law cannot be ignored because it constitutes the basis, the framework, within which the community of nations may coexist and flourish. Turkish fears cannot be disregarded either because there is a high risk of an armed conflict in the Aegean. Lasting stability and peace in the Aegean have to be based on international law while taking into account the historic prejudices of the two states.

Under these circumstances, a promising formula is the following. Greece will expand its territorial sea to twelve miles. At the same time, it will inform the interested states, such as Turkey, the riparian states of the Black Sea, the U.S. and other marine powers of the world, that it will leave outside its territorial waters corridors of high seas connecting the pockets of the high seas which would otherwise remain encircled in the areas between the Dodecanese islands and the Cyclades islands. It will also leave high seas corridors in the two passages between Rhodes, Karpathos and Crete. These high seas corridors will remain available throughout the Aegean and the Mediterranean Sea and will allow free and uninterrupted navigation through high seas for all the ships of the world. The breadth of the high seas corridors can be the minimum breadth of the corridors which exist today in the Aegean between the Dodecanese and the Cyclades islands.⁵⁶ An extension of the Greek territorial sea on this basis will respect international law while, at the same time, giving Turkey the right of free navigation throughout the Aegean to the Mediterranean Sea. It will also give Greece the opportunity to avoid any possible consequences of the creation of international straits among the Aegean islands.⁵⁷ This proposal is not an innovation in the field of the international law of the sea. A similar example has been followed by Japan which, in the Soya strait, the Tsugaru strait, the eastern and western channels of the

56. See Syrigos, *Economikos Tachydromos* (Greek weekly magazine), 6 July 1995, pp.28-30.

57. See also a similar view by Politakis who proposed that Greece would retain "the six-mile limit only within the critical straits so that high seas corridors remain available throughout the Aegean, as is the case today." In the other areas of the Aegean, the breadth of the Greek territorial sea will be twelve miles; in Politakis, *I JourMCL*, 1995, p.504. See map 13.

Tsushima strait and the Osumi straits, only retained the three-mile limit.⁵⁸ The application of this proposal will be tantamount to the accommodation of qualitatively different issues, namely, the operation of international law, the free navigation in the Aegean Sea and the security of both states, issues which can be the basis for the commencement of a new era in Greek-Turkish relations.

58. Law of the Territorial Sea No. 30, 2 May 1977, in *National Legislation on the Territorial Sea, the Right of Innocent Passage and Contiguous Zone*, 1995, pp.177-182.



Conclusions

In international affairs, there is a tendency to view and explain certain regional problems in terms of the traditional hostility which exists between two nations. Greece and Turkey fall, undoubtedly, within this category: two countries which have fought each other persistently for more than 700 years and which have constituted a threat to each other's existence during this entire period. Despite the fact that, in the contemporary world, other traditional enemies not only communicate but even work together, a good example being France and Germany, the two countries of the eastern Mediterranean still consider each other as a threat to their respective security. From the arguments which have been presented in the previous pages, some interesting conclusions can be drawn.

Up to 1973, there was no hint that the Aegean would constitute an issue of major crisis between the two countries. Theoretically, there was no territory in dispute between the two countries. Everything was finally settled by the conclusion of two conventions: the Lausanne Treaty in 1923, which generally addressed territorial and population problems between the two countries, and the Paris Treaty, which defined the future of the Dodecanese group of islands. The only problems that existed were mainly illegal fishing and smuggling.

In 1973, during a serious global economic crisis, Turkey decided to lay claim to parts of the potentially oil-rich Aegean continental shelf. There can be no doubt that one of the reasons for the Turkish decision was Greece's diplomatic isolation from the West, and especially from Europe, due to the continuous existence of a military government in Greece for seven years, from 1967 up to 1974. It has been pointed out that the correct "assessment of the significance of another state's actions sometimes presents a hard problem, one of the hardest in statecraft".¹ Thus, at first sight, Turkish claims seemed to be of an economic nature directly connected with the lack of natural resources. In 1973, it was impossible to foresee how this dispute would unfold. The Turkish invasion of Cyprus in 1974 overshadowed any economic pa-

1. Northedge and Donelan, 1971, p.90.

rameters. Continental shelf delimitation in the Aegean Sea then became a problem of national sovereignty, vital interests, security and national honor.

Since the creation of the problem, and in spite of what is generally believed, it was Turkey, not Greece, which made considerable changes in the aims of its foreign policy, as well as the means of achieving its objectives. In 1973 and 1974, Turkey relied exclusively on legal arguments to justify the unilateral delimitation of the Aegean continental shelf. In the following years, the political element of the difference was progressively emphasized although—and this is the inherent idiom of Turkish foreign policy—the arguments used were of a legal and not of a political nature.

Turkey also started to contest the whole status quo not only of the Aegean Sea, but of Greek-Turkish relations generally. The delimitation of the continental shelf, the extent of Greek territorial waters, the contest over the jurisdictional scope of the Athens FIR and NATO operational responsibilities are issues which are directly or indirectly connected with the drawing of a median line in the middle of the Aegean between the two mainlands. The new problem of the territorial dispute over some of the Aegean islets and rocks further proves the existence of this contest concerning the Aegean status quo. The fortification of the eastern Aegean islands is seen by Turkey as a violation of the existing treaties between the two countries. But the treatment of the Muslim minority in Western Thrace or the veto rights of Greece on a possible future application of Turkey to join the EU are matters totally unconnected with any Aegean problem. They simply fall within the context of the Turkish approach that Greece and Turkey should confront and solve together all the differences between them, probably in a package deal agreement.

While Turkish foreign policy can be described as a tide moving continuously in a certain direction, Greek aims and objectives resemble a lake which regularly recycles its water supplies. Despite the dramatic rhetoric which sustained it during the first years of the PASOK administration, Greek foreign policy still insists that the only problem existing between the two countries is the delimitation of the continental shelf, which is a legal issue. The only difference between 1974 and today in Greece's concerns is the issue of dialogue and the approach to the Cyprus problem. Greek foreign policy as practiced over the last few years, especially after 1988, has helped Turkey to place an emphasis on non-legal and, later, non "Aegean" arguments.

However, other elements are hidden behind these legal or political arguments and diplomatic maneuvers, elements which present a whole level of

explanations of the origins of the Aegean Sea dispute. Thus, Greece fears that Turkey wants to incorporate under the Turkish flag all the eastern Aegean islands. The enclaving of these islands within the Turkish continental shelf area is considered to be the first step towards the resumption of *de facto* control over them. Greek fears are fomented by statements made by Turkish officials and the Turkish parliament who threaten the use of military power to undermine Greek sovereignty over the Aegean islands. On the other hand, Turkey believes that Greece has never abandoned the *Megali Idea* policy. The events in Cyprus after 1955 revealed that this policy had not been discarded after the Lausanne settlement of 1922. Greece's claims over the Aegean continental shelf and in relation to its national airspace and territorial sea are regarded by Turkey as an attempt to convert the Aegean into a Greek lake. Finally, Turkey is afraid of the fact that, with the exception of the Black Sea which is enclosed, its maritime boundaries are, in a way, encircled by those of Greece in the Aegean and those of the predominantly Greek island of Cyprus in the Mediterranean.

Under these circumstances, it is not difficult to identify the minimum standards that each country can accept in relation to the Aegean Sea dispute. Greece does not want the enclavement of any Greek island by the Turkish continental shelf and requires access to the Greek continental shelf westward of the eastern Aegean islands. Turkey finds it unacceptable to be denied direct exits for its shipping to the high seas areas over all of the Aegean Sea.

But apart from the Greek and Turkish positions and fears, how important internationally is a settlement of the dispute between the two countries? For the time being, there is no immediate and dramatic threat to international peace and security. Nevertheless, the situation cannot be allowed to rumble in the backyard of international affairs because, as has already been shown during the Imia/Kardak crisis, it could rapidly and unexpectedly bring the two countries to the brink of war in the Aegean Sea, where tensions are already high. For any settlement to be considered, however, the parties must believe that the benefits of a solution outweigh the losses.

"In any dispute if one party insists on its legal rights, while the other, recognising the weakness of its legal case, seeks a settlement on the basis of equity, there is little room for agreement on matters of substance".² Unfortu-

2. Merrills, 1991, p.23.

nately, this is the situation in the Aegean Sea where an "amount of opportunism", which should not be overlooked, accompanies Turkish legal views.³

After the Russo-Turkish War of 1768-1774, Russia and the Ottoman Empire signed the peace treaty of Kucuk Kainarca in 1774.⁴ The Russian government interpreted two clauses of this treaty, read together, as conferring on it a protectorate over all Eastern Orthodox Christian Ottoman subjects. This interpretation of the terms does not survive close examination. However, "the Russians were able to insist on it, thanks to Russia's decisive superiority over Turkey in military power at this stage".⁵ The situation is similar to the present Greek-Turkish conflict. Despite Greece's legal "orthodox"⁶ approach to most of the issues relating to the Aegean question, Turkey "only takes recourse to legal texts if it is sure that they are in favour of its own position".⁷ It is Turkey's superiority in military power over Greece which gives it the opportunity to take different approaches to different issues.

Is it then idle to talk of the international rule of law in relation to the Aegean dispute? The answer is in the negative and this is not because of idolatry of international law. Neither is the answer negative just because Greece insists that it will never accept an approach to the problem other than the legal one. The fact is that, when it comes to the heart of the matter, Turkey is also using legal arguments and that, more important, the peace and stability in the area as a result of any third-party decision, political agreement or package deal solution, although none seems close, have to be grounded in something. And this undoubtedly has to be international law.

3. Kramer, in *Greek-Turkish Conflict in the 1990's*, p.62.

4. CTS, Vol.45, pp.349-401.

5. Toynbee, 1981, p.191, fn.154.

6. Bowett, 1979, p. 260.

7. Kramer, in *Greek-Turkish Conflict in the 1990's*, p.62..

Bibliography

Books are cited by author's name only and the year in which the work was published. Articles are cited by author's name, the title of the periodical and the year in which the work was published. If more than one article has been published within one year, these are cited as [1], [2], etc.

- Aguilar, A.M., "The Patrimonial Sea or the Economic Zone Concept," *San Diego Law Review*, Vol.11, 1974
- Ahmad, F., *The Making of Modern Turkey*, Routledge, London, 1993
- Ahnish, F.A., *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea*, Clarendon Press, Oxford, 1993
- Akehurst, M., "Custom as a Source of International Law," *British Yearbook of International Law*, Vol. 47, 1974-75
- Alasya, F.H., "Niçin Kıbrıs Türk Cumhuriyeti?" [Why a Turkish-Cypriot Republic?], *Türk Dünyası Araştırmaları Dergisi*, Vol. 33, December 1984 (translation in Greek by ELIAMEP)
- Alexander, L., "Special Circumstances: Semienclosed Seas," in *Law of the Sea: The Emerging Regime of the Oceans*, Gamble and Pontecorvo (eds.), Ballinger, Cambridge, Mass., 1974
- Alexander, L., "Baseline Delimitations and Maritime Boundaries," *Virginia Journal of International Law*, Vol. 23, 1983
- Alexandris, A., "Imbros and Tenedos: A Study in Turkish Attitudes Toward Two Ethnic Greek Island Communities since 1923," *Journal of the Hellenic Diaspora*, Vol. VIII, No.1, 1990
- Alexandris, A., "Turkish Policy Towards Greece During the Second World War and its Impact on the Greek-Turkish Detente," *Balkan Studies*, Vol. 23, Institute for Balkan Studies (IMXA), 1982
- Alexandris, Al., *The Greek Minority of Istanbul and Greek-Turkish Relations 1918-1974*, Centre for Asia Minor Studies, Athens, 1983
- Alexandris, Al., "Το Ιστορικό Πλαίσιο των Ελληνοτουρκικών Σχέσεων" [The Historical Framework of Greek-Turkish Relations], in *Οι Ελληνοτουρκικές Σχέσεις, 1923-1987* [Greek-Turkish Relations, 1923-1987], Gnosi, Athens, 1988

- Alexandris, Al., "Ο Ελληνισμός στην Ίμβρο και Τένεδο" [*Hellenism in Imbros and Tenedos*], *Κοιτίδες Ελληνισμού, Ίμβρος, Τένεδος, Προποντίδα, Χάλκη* [*Birthplaces of Hellenism, Imbros, Tenedos, Propontida, Chalki*], Epta Imeres-Kathimerini, Athens, 1996
- Alexandris, Ap. "Πολιτικά Αναμνήσεις" [*Political Recollections*], Patras, Greece, 1947
- Alvarez, D.J., *Bureaucracy and Cold War Diplomacy*, IMXA, Institute for Balkan Studies, Thessaloniki, 1980
- Andrassy, J., *International Law and the Resources of the Sea*, Columbia University Press, New York, 1970
- Andreopoulos, G., *Διεθνές Δίκαιον* [*International Law*], Athens, 1977
- Aristoteles, *Περί Ηθικών Νικομαχείων* [*Nikomachean Ethics*], VII, 9, 17, 9-10, 31-33, Jackson translation, Cambridge University Press, Cambridge, 1879
- Attard, D., *The Exclusive Economic Zone in International Law*, Clarendon Press, Oxford, 1987
- Auburn, F.M., "The North Sea Continental Shelf Boundary Settlement," *Archiv des Völkerrechts*, 1974
- Auguste, *The Continental Shelf: The Practice and Policy of the Latin American States with Special Reference to Chile, Ecuador and Peru*, Librairie Droz, Genève, 1960
- Bardonnet, "La largeur de la mer territoriale," *Revue Generale de Droit International Public*, Vol. 66, 1962
- Bastianeli, F., "Boundary Delimitations in the Aegean Sea," *Marine Policy*, Vol. 5, 1983
- Bastid, S., *Les traités dans la vie internationale, conclusion et effets*, Economica, Paris, 1985
- Bayulken, H., "Turkey-Greece: Questions of Foreign and National Security Policy," *Turkish Review Quarterly Digest*, Winter 1985-86
- Beauchamp, K., "The Management Function of Ocean Boundaries," *San Diego Law Review*, Vol. 26, 1986
- Bedjaoui, "L'énigme des principes équitables dans le droit de la délimitation maritime," *Revista Espanola de Derecho Internacional*, Vol. 42, 1990
- Bernitsas, P., "The Prinos Case: The International Implications of the Nationalization of Companies," in Greek, Demokritus University of Thrace, Department of Law, Sakkoulas Publ., Komotini, 1987
- Beveridge, F., "The Lockerbie Affair," *International and Comparative Law Quarterly*, 1992

- Bilge, S. A., [1], "Discussions," in *The Aegean Issues: Problems and Prospects*, Foreign Policy Institute, Ankara, 1989, pp.8-39
- Bilge, S. A., [2], "The Situation in the Aegean," in *The Aegean Issues: Problems and Prospects*, Foreign Policy Institute, Ankara, 1989, pp.67-80
- Birand, M.A., "Turkey and the Davos Process: Experiences and Prospects," in *The Greek-Turkish Conflict in the 1990s*, Conostas, D., (ed.), Macmillan, 1992
- Bitsios, D., *Πέρα από τα Σύννορα, 1974-1977* [*Out of the Frontiers*], Second Edition, Hestia, Athens, 1983
- Blecher, M.D., "Equitable Delimitation of the Continental Shelf," *American Journal of International Law*, Vol. 73, 1979
- Blix, H., "The Requirement of Ratification," *British Yearbook of International Law*, Vol. 30, 1953
- Blix, H., Emerson, J.H., *The Treaty Makers Handbook*, Oceana, Sweden, 1973
- Boggs, S.W., "Problems of Water Boundary Definition: Median Lines and International Boundaries through Territorial Waters," *Geographical Review*, Vol. 27, 1937
- Boggs, S.W., *International Boundaries: A Study of Boundary Functions and Problems*, New York, 1940
- Boggs, S.W., "Delimitation of Seaward Areas under National Jurisdiction," *American Journal of International Law*, 45, 1951
- Booth, K., *Law, Force and Diplomacy at Sea*, George Allen and Unwin, London, 1985
- Bosworth, R., "Britain and Italy's Acquisition of the Dodecanese, 1912-15," *The Historical Journal*, Vol. XIII, 4, 1970
- Bowett, D.W., "Estoppel before International Tribunals and its Relation to Acquiescence," *British Yearbook of International Law*, 1957
- Bowett, D.W., *Proceedings of the American Society of International Law*, 1966
- Bowett, D.W., *The Law of the Sea*, Manchester University Press, Manchester, 1967
- Bowett, D.W., "The Arbitration between the U.K. and France Concerning the Continental Shelf Boundary in the English Channel and the South-Western Approaches," *British Yearbook of International Law*, Vol. 49, 1978

- Bowett, D.W., *The Legal Regime of Islands in International Law*, Oceana Publications, New York, 1979
- Bowett, D.W., "The Economic Factor in Maritime Delimitation Cases," *International Law at the Time of its Codification, Essays in Honour of Roberto Ago*, Vol. II, Giuffrè, Milano, 1987
- Boyle, A.E., "The Law of Treaties and the Anglo-French Continental Shelf Arbitration," *International and Comparative Law Quarterly*, Vol. 29, 1980
- Brandon, M., "The Validity of Non-Registered treaties," *British Yearbook of International Law*, Vol. 29, 1952
- Bredhimas, A., "Ο Νέος Τουρκικός Κανονισμός για τη Ναυσιπλοΐα στα Στενά του Βοσπόρου και των Δαρδανελίων" [The New Turkish Regulation for the Passage in the Straits of Bosphorus and the Dardanelles], *Το Αιγαίο Πέλαγος και το Νέο Δίκαιο της Θάλασσας [The Aegean Sea and the New Law of the Sea]*, Perakis, S., (ed.), Sakoulas, Athens, 1996
- Brierly, J.L., "Vital Interests and the Law," *British Yearbook of International Law*, Vol. 21, 1944
- Brierly, J.L., *The Law of Nations*, Sixth Edition by Waldock, Oxford, 1963
- Brown, E.D., *The Legal Regime of Hydrospace*, Stevens and Sons, London, 1971
- Brown, E.D., "The Continental Shelf and the Exclusive Economic Zone: the Problem of Delimitation at UNCLOS III," *Maritime Policy and Management*, Vol. IV, 1977
- Brown, E.D., "Rockall and the Limits of National Jurisdiction of the UK," *Marine Policy*, Vol. 2, 1978
- Brown, E.D., [1], "The Anglo-French Continental Shelf Case," *Yearbook of World Affairs*, Vol. 33, 1979
- Brown, E.D., [2], "The Anglo-French Continental Shelf Case," *San Diego Law Review*, Vol. 16, 1979
- Brown, E.D., "Delimitation of Offshore Areas: Hard Labours and Bitter Fruits at UNCLOS III," *Marine Policy*, Vol. 5, 1981
- Brown, E.D., "The Tunisia-Libya Continental Shelf Case: A missed Opportunity," *Marine Policy*, Vol. 7, 1983,
- Brown, E.D., *Sea-Bed Energy and Mineral Resources and the Law of the Sea, Volume 1, The Areas within National Jurisdiction*, Graham and Trotman, 1984, p.p. I.11 4-6
- Brown, J., *Delicately Poised Allies: Greece and Turkey, Problems, Policy Choices and Mediterranean Issues*, Brassey's, Great Britain, 1991

- Brownlie, I., *International Law and the Use of Force by States*, Oxford, 1963
- Brownlie, I., *System of the Law of Nations: State Responsibility*, Part I, Oxford, 1983
- Brownlie, I., *Principles of Public International Law*, Fourth Edition, Oxford, 1990
- Caflich, L., "La délimitation des espaces marins entre états dont les côtes se font faces ou sont adjacentes," *Traité du Nouveau Droit de la Mer*, Dupuy, R.J., and Vignes, D., (eds.), Collection "Droit International," Paris, 1985.
- Caga, T., "Principles of Free Passage and Security in the Montreux Convention," *Bogazlardan Geçiş Güvenliği ve Montreux Sözleşmesi [Safety Navigation through Straits and the Montreux Convention]*, Istanbul Üniversitesi Hukuk Fakültesi, Istanbul, 1994
- Campbell, J., Sherrard, Ph., *Modern Greece*, Nations of the Modern World, London, 1968
- Castaneda, J., "Negotiations on the Exclusive Economic Zone at the Third United Nations Conference on the Law of the Sea," *Essays in International Law in Honour of Judge Manfred Lachs*, Institute of State and Law of the Polish Academy of Sciences, Martinus Nijhoff, 1984
- Celik, E., "La loi Turque sur la mer territoriale," *Turkish Yearbook of International Relations*, 1964
- Charney, J., "A preliminary Evaluation of the Judgment by the ICJ in the *Case Concerning the Continental Shelf*," *ASIL Proc.*, Vol. 76, 1982
- Charney, J., "Ocean Boundaries between Nations: A theory for progress," *American Journal of International Law*, Vol. 78, 1984
- Charney, J., "The Persistent Objector rule and the Development of Customary International Law," *British Yearbook of International Law*, 1985
- Charney, J., "Ocean Boundaries in the Aegean Sea," in *The Aegean Issues: Problems and Prospects*, Foreign Policy Institute, Ankara, December 1989
- Cheng, B., "The International Law Commission," *Current Legal Problems*, Vol. 5, 1952
- Cheng, B., *General Principles of Law as Applied by International Courts and Tribunals*, Grotius Publications Limited, Cambridge, 1987
- Childs, T. W., *Italo-Turkish Diplomacy and the War over Libya, 1911-1912*, E.J. Brill, Leiden, 1990
- Chiu, H., "Some Problems Concerning the Application of the Maritime Boundary Delimitation Provisions of the 1982 United Nations Conven-

- tion on the Law of the Sea between Adjacent or Opposite States," *Maryland Journal of International Law and Trade*, 9, 1985.
- Christie, D., "From the Shoals of Ras Kaboudia to the Shores of Tripoli: The Tunisia/Libya Continental Shelf Boundary Delimitation," *Georgia Journal of International and Comparative Law*, 13, 1983
- Churchill, R.R., "Maritime Delimitation in the Jan Mayen Area," *Marine Policy*, Vol. 9, 1985
- Churchill, R.R., *EEC Fisheries Law*, Martinus Nijhoff Publishers, 1987
- Churchill, R.R., and Lowe, A.V., *The Law of the Sea*, Second Edition, Manchester University Press, Manchester, 1988
- Churchill, R.R., "EC Fisheries and an EZ-Easy!," *Ocean Development and International Law*, Vol. 23, 1992
- Ciobanu, D., "Litispence between the International Court of Justice and the Political Organs of the United Nations," *The Future of the International Court of Justice*, Gross, L., (ed.), Vol. I, 1976
- Clain, L.E., "Gulf of Maine—A Disappointing First in the Delimitation of a Single Maritime Boundary," *Virginia Journal of International Law*, 25, 1985
- Clark Arend, A., Beck, R., *International Law and the Use of Force, Beyond the U.N. Paradigm*, Routledge, London, 1993
- Clark, E.C., "The Turkish *varlik vergisi* Reconsidered," *Middle Eastern Studies*, 8, 1972
- Clogg, R., "Troubled Alliance: Greece and Turkey," *Greece in the 1980's*, MacMillan Press in association with the Centre of Contemporary Greek Studies, King's College, London, 1983
- Clogg, R., [1] *A Concise History of Greece*, Cambridge University Press, Cambridge, 1992
- Clogg, R., [2] "Greek-Turkish Relations in the Post-1974 Period," *The Greek-Turkish Conflict in the 1990s*, Conostas, D., (ed.), Macmillan, 1992
- Collier, J.G., "The Regime of Islands and the Modern Law of the sea," *The Law of the Sea and International Shipping*, Oceana Publications, 1985
- Collins, E., Jr., and Rogoff, M.A., "The Gulf of Maine Case and the Future of Ocean Boundary Delimitation," *Maine Law Review*, Vol. 38, 1986
- Colombos, J.C., *International Law of the Sea*, Sixth Edition, Longmans, London, 1967
- Colson, D., "The United Kingdom-France Continental Shelf Arbitration," *American Journal of International Law*, Vol. 72, 1978

- Colson, D., "The United Kingdom-France Continental Shelf Arbitration: Interpretive Decision of March 1978," *American Journal of International Law*, Vol. 73, 1979
- Conforti, B., "L'arrêt de la Cour Internationale de Justice dans l'affaire de la délimitation du plateau continental entre la Libye et Malte," *Revue Générale de Droit International Public*, Vol. 90, 1986
- Cooper, "Contiguous Zones in Aerospace—Prevention and Protective Jurisdiction," *Explorations in Aerospace Law*, Vlasic, (ed.), 1968
- Coufoudakis, V., "Ideology and Pragmatism in Greek Foreign Policy," *Current History*, December 1982
- Coufoudakis, V., "Greco-Turkish Relations and the Greek Socialists: Ideology, Nationalism and Pragmatism," *Journal of Modern Greek Studies*, October 1983
- Coufoudakis, V., "Οι ΗΠΑ, τα Ηνωμένα Έθνη και το Ελληνικό Ζήτημα" [The U.S., the United Nations and the Greek issue], *Η Ελλάδα στη Δεκαετία 1940-1950* [Greece in the Decade 1940-1950], p.487.
- Coufoudakis, V., "The Eastern Mediterranean in the Defence of the West—The Case of Greece," *NATO's Sixteen Nations*, October 1986
- Coufoudakis, V., and Valinakis, Y., "The Evolution of Greece's Defence Strategy in Relation to NATO Contingencies," *The International Spectator*, Vol. XXII, No. 1, 1987
- Coufoudakis, V., [1], "Greek Political Party Attitudes Towards Turkey," in *The Greek-Turkish Conflict in the 1990s*, Conostas, D., (ed.), Macmillan, 1992
- Coufoudakis, V., [2], "Greco-Turkish Relations and Cyprus, Ideology, Pragmatism, Deadlock," *The Greek Socialist Experiment*, Kariotis, Th., (ed.), Pella, New York, 1992
- Coufoudakis, V., "Greece, Turkey, Cyprus and the United States in the Changing International Order," in *Greece, the New Europe and the Changing International Order*, Psomiades, H., and Thomadakis, S., (eds.), Pella Publishing Company, New York, 1993
- Crocker, H.G., *The Extent of the Marginal Sea*, United States Department of State, Washington, 1919
- Cuadra, E., "Air Defence Identification Zones: Creeping Jurisdiction in the Airspace," *Virginia Journal of International Law*, 1978
- Cunningham, A.B., *A Sailor's Odyssey, The Autobiography of the Admiral of the Fleet Viscount Cunningham of Hyndhope*, London, 1951

- D'Amato, *The Concept of Custom in International Law*, Ithaca, New York, 1971
- David, E., "La sentence arbitrale du 14 fevrier 1985 sur la délimitation de la frontière maritime Guinée/Guinée-Bissau," *Annuaire Français de Droit International*, Vol. 31, 1985
- Davison, R., *Essays in Ottoman and Turkish History: The Impact of the West*, Saqi Books, Texas, 1990
- Delin, L., "Shall Islands be Taken into Account when Drawing the Median Line According to Article 6 of the Convention on the Continental Shelf," *Nordisk Tidsskrift for International Ret*, Vol. 41, 1977
- Denaro, J.M., "State's Jurisdiction in Airspace under International Law," *Journal of Air and Commerce Law*, 1970
- Detter de Lupis, I., *The Law of War*, Cambridge University Press, Cambridge, 1987
- Dipla, H., *Le regime juridique des iles dans le droit international de la mer*, Institut universitaires des Hautes Etudes Internationales, Geneva, 1984
- Dipla, H., *Η Ελληνοτουρκική Διαφορά για την Υφαλοκρηπίδα του Αιγαίου, Εναλλακτικές Λύσεις και Προτάσεις [The Greek-Turkish Dispute over the Aegean Continental Shelf, Alternatives and Proposals]*, ELIAMEP, Athens, 1992
- Dontas, D., *Greece and Turkey: The Regime of the Straits, Lemnos and Samothrace*, Eleuftheroudakis, Athens, 1987
- Doris, E., "Τα Δημόσια Κτήματα-Αιγιαλός και Παραλία-Αιγιαλίτις Ζώνη-Υφαλοκρηπίς-Ρύπανσις" [Public Lands-Seashore and Coast-Territorial Sea-Continental Shelf-Pollution], Athens, 1977, Vol. B'
- Dragoumis, I., *Ο Ελληνισμός μου και οι Έλληνες [My Hellenism and the Greeks]*, Athens, 1927
- Dupuy, R.-J., "Coutume sage et coutume sauvage," *Mélanges offerts à Charles Rousseau*, Paris, 1974
- Economides, K., "La zone contigue, aujourd' hui et demain," presentation at a conference on the new law of the sea organized by the Panteios University, Athens, 27-29 September 1982
- Economides, K., "Nouveaux éléments concernant l'île de Lemnos: at problème totalement artificiel," *Revue Hellénique de Droit International Public*, 1984
- Economides, K., "Βασικές Ρυθμίσεις του Νέου Δικαίου της Θάλασσας" [Basic Regulations of the New Law of the Sea], *Διεθνές Δίκαιο και*

- Διεθνής Πολιτική* [International Law and International Policy], Vol. 9, 1985
- Economides, K., "Ελληνοτουρκικές Σχέσεις: Εκτιμήσεις, Προτάσεις, Θέσεις" [Greek-Turkish Relations: Opinions, Proposals, Views], ELIAMEP, Conference, April 1986, Athens, 1986
- Economides, K., *Το Νομικό Καθεστώς των Ελληνικών Νησιών του Αιγαίου* [The Legal Regime of the Greek Islands of the Aegean Sea], Gnosi, Athens, 1989
- Economides, K., [1], "Les îlots d'Imia dans la mer Egée: Un différend créé par la force," *Revue Générale de Droit International Public*, 101, 1997
- Economides, K., [2] "Quelques commentaires sur l'article de Mr. H. Pazarci," *Revue Générale de Droit International Public*, 101, 1997
- Elias, B.T., "The Doctrine of Intertemporal Law," *American Journal of International Law*, Vol. 74, 1980
- Elias, T.O., *The Modern Law of Treaties*, Dobbs Ferry, Oceana Publications, New York, 1974
- Elkind, J.B., "The Duty to Appear before the International Court of Justice," *International and Comparative Law Quarterly*, Vol. 37, 1988
- Ely N., "Seabed Boundaries between Coastal States: The effect to be Given Islands as Special Circumstances," *International Lawyer*, Vol. 6, No. 2, 1972
- Evans, M.D., *Relevant Circumstances and Maritime Delimitation*, Clarendon Press, Oxford, 1989
- Evans, M.D., "Maritime Delimitation and Expanding Categories of Relevant Circumstances," *International and Comparative Law Quarterly*, Vol. 40, 1991
- Evans, M.D., [1], "Less than an Ocean Apart: The Delimitation of Maritime Zones and the Decisions in the Cases Concerning the St. Pierre and Miquelon and Jan Mayen Islands," *International and Comparative Law Quarterly*, Vol. 43, 1994
- Evans, M.D., [2], "Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway)," *International and Comparative Law Quarterly*, Vol. 43, 1994
- Evensen, J., "The Anglo-Norwegian Fisheries Case and its Legal Implications," *American Journal of International Law*, Vol. 46, 1952
- Evensen, J., "La délimitation du plateau continental entre la Norvège et l'Islande dans le secteur de Jan Mayen," *Annuaire Français de Droit International*, Vol. 17, 1981

- Evensen, J., "The Delimitation of Exclusive Economic Zones and Continental Shelves as Highlighted by the International Court of Justice," *The New Law of the Sea*, Rozakis, C.L., and Stephanou, C.A., (eds.), Elsevier Science Publishers, North Holland, 1983
- Extavour, W.C., *The Exclusive Economic Zone*, Institut Universitaire des Hautes Etudes, Geneva, 1979
- Farooque, "Declaration of a Diplomat as *persona non grata*," *Indian Journal of International Law*, Vol. 28, 1988
- Feldman, M., "The Tunisia-Libya Continental Shelf Case: Geographic Justice or Judicial Compromise," *American Journal of International Law*, 77, 1983
- Fentress, M.A., "Maritime Boundary Dispute Settlement: The Non-Emergence of Guiding Principles," *Georgia Journal of International and Comparative Law*, Vol. 15, 1985
- Fitzmaurice, G., "Do Treaties Need Ratification?," *British Yearbook of International Law*, Vol. 15, 1934
- Fitzmaurice, G., "The Law and Procedure of the International Court of Justice, 1951-54: General Principles and Sources of Law," *British Yearbook of International Law*, Vol. 30, 1953
- Fitzmaurice, G., "Reservations to Multilateral Treaties," *British Yearbook of International Law*, Vol. 34, 1957
- Fleischhauer, C.A., "Negotiation," in *Encyclopedia of International Law, Settlement of Disputes*, Vol. 1, Max Planck Institute for Comparative Public Law and International Law, North-Holland Publishing Company, Amsterdam, 1981
- Francalanci, G., Romano, D., Scovazzi, T., *Atlas of the Straight Baselines*, Part 1, Giuffrè Editore, Milano, 1986
- Friedmann, W., "The North Sea Continental Shelf Cases—A Critique," *American Journal of International Law*, Vol. 64, 1970
- Fusillo, M.S., "The Legal Regime of 'Uninhabited Rocks' Lacking an Economic Life of their Own," *Italian Yearbook of International Law*, Vol. 4, 1978-79
- Garcia Amador, F.V., "The Latin-American Contribution to the Development of the Law of the Sea," *American Journal of International Law*, Vol. 68, 1974
- Garzon Clariana, G., "L' Union Européenne et la convention de 1982 sur le droit de la mer," *Revue Belge de Droit International*, 1995

- Gebrehana, T., *Duty to Negotiate: An Element of International Law*, Svenska Institutet for Internationell Ratt, Uppsala, 1978
- Georgacopoulos, G., *Η Αιγιαλίτιδα Ζώνη της Ελλάδος [The Greek Territorial Sea]*, Athens, 1988
- Georgacopoulos, J., "The Aegean Sea Continental Shelf Problem: Presentation of the Greek Case," *International Business Lawyer*, Vol. 6, 1978
- Gianaris, N.V., *Greece and Turkey: Economic and Geopolitical Perspectives*, Praeger, New York, 1988
- Gidel, G.C., *Le Droit International Public de la mer*, Vol. III, Paris, 1934
- Goldie, L.F.E., "The International Law Commission and the Progressive Development of International Law," in *Federal Bar Journal*, Vol. 28, 1968
- Goldie, L. F. E., "The International Court of Justice's Natural Prolongation and the Continental Shelf Problem of Islands," *Netherlands Yearbook of International Law*, Vol. 4, 1973
- Gounaris, E., "The Delimitation of the Continental Shelf of Jan Mayen," *Archive des Völkerrechts*, 1983
- Gounaris, M., "The Delimitation of the Continental Shelf of Islands: Some Observations," *Revue Hellénique de Droit International Public*, Vol. 33, 1980
- Gray, C.D., *Judicial Remedies in International Law*, Oxford, 1987
- Gregoriades, J., "The Status of the Dodecanese, 1912-1923, 1923-1945," *Revue Hellénique de Droit International Public*, Vol. 2, 1949
- Greig, D.W., *International Law*, Butterworths, London, 1976
- Grisel, E., "The Lateral Boundaries of the Continental Shelf and the Judgment of the International Court of Justice in the *North Sea Continental Shelf Cases*," *American Journal of International Law*, Vol. 64, 1970
- Groc, R., "Renaissance de l'Islam Turc?," *L' Afrique et l' Asie modernes*, 155, Hiver, 1988
- Gross, L., "The Dispute between Greece and Turkey Concerning the Continental Shelf in the Aegean," *American Journal of International Law*, Vol. 71, 1977
- Gurcan, I., "Certain Defence Issues in the Aegean sea Basin: A Turkish view," in *The Aegean Issues: Problems and Prospects*, Foreign Policy Institute, Ankara, 1989
- Gutteridge, J.A., "The 1958 Geneva Convention on the Continental Shelf," *British Yearbook of International Law*, 1959

- Haas, E.B., "Is There a Hole in the Whole? Knowledge, Technology, Interdependence and the Construction of International Regimes," *International Organization*, Vol. 29, 1975
- Hailbronner, K., "Die Freiheit der Luft und Saatliche Hoheitsrechte," *Thesaurus Acroasium*, Thessaloniki, 1981
- Hailbronner, K., "Freedom of the Air and the Convention on the Law of the Sea," *American Journal of International Law*, Vol. 77, 1983
- Hailbronner, K., "Airspace over Maritime Areas," *Encyclopedia of Public International Law, Law of the Sea-Air and Space*, Vol. 11, Max Planck Institute for Comparative Public Law and International Law, North-Holland Publishing Company, Amsterdam, 1989
- Halkiopoulos, Th., *Ελληνικά Προβλήματα στον Αέρα από Διπλωματική, Στρατιωτική, Τεχνική και Νομική Σκοπιά* [Greek Problems in the Air, from a Diplomatic, Military, Technical and Legal Point of View], presentation at a conference of ELIAMEP, 6 November 1987, Athens, 1989
- Halkiopoulos, Th., *Η Νέα Σύμβαση του Δικαίου της Θάλασσας του 1982 και οι Ελληνοτουρκικές Σχέσεις* [The New 1982 Convention of the Law of the Sea and Greek-Turkish Relations], presentation at a conference on the new law of the sea organized by the Panteios University, Athens, September 1993
- Haraszti, G., *Some Fundamental Problems of the Law of Treaties*, Akademiai Kiado, Budapest, 1973
- Hardy, M., "Decision Making at the Law of the Sea Conference," *Revue Belge de Droit International*, Vol. 11, 1975
- Hassapopoulos, *Ελληνικά Προβλήματα στον Αέρα από Διπλωματική, Στρατιωτική, Τεχνική και Νομική Σκοπιά* [Greek Problems in the Air, from a Diplomatic, Military, Technical and Legal Point of View], Report at a Conference of ELIAMEP, 6 November 1987, Athens, 1989
- Headlam-Morley, J., "The Black Sea, the Bosphorus and the Dardanelles," *Studies in Diplomatic History*, London, 1930
- Heinzen, B.G., "The Three-Mile Limit: Preserving the Freedom of the Seas," *Stanford Law Review*, July 1979
- Heliadis, D. M., *Τα Μυστικά Αρχεία του Γερμανικού Υπουργείου Εξωτερικών και του Φόρειν Όφισ για την Τουρκία* [The Secret Archives of the German Ministry of Foreign Affairs and of the Foreign Office for Turkey], Labyrinthos, Athens, 1996

- Herman, L., "The Court Giveth and the Court Taketh Away: An Analysis of the *Tunisia-Libya Continental Shelf* case," *International and Comparative Law Quarterly*, Vol. 33, 1984
- [Herodotus], *Herodoti Historiae*, Book A'
- Hilmy, N., "Article 6 of the Geneva Convention on the Continental Shelf, 1958," *Thesaurus Acroasium*, Vol. VII, 1977
- Hirschon, R., *Heirs of the Greek Catastrophe: The Social Life of Asia Minor, Refugees in Piraeus*, Clarendon Press, Oxford, 1989
- Hodgson, D.C., "The Tuniso-Libyan Continental Shelf Case," *Case Western Reserve Journal of International Law*, Vol. 16, 1984
- Hodgson, R.D., and Alexander, L., "Toward an Objective Analysis of Special Circumstances," in *Law of the Sea Occasional Paper*, No. 13, 1973
- Hodgson, R.D., "Islands: Normal and Special Circumstances," *Law of the Sea; Emerging Regime of the Oceans*, Gamble, J.K., and Pontecorvo, G., (eds.), 1974
- Hodgson, R.D., and Smith, R.W., "The Informal Single Negotiating Text (Committee II): A Geographical Perspective," *Ocean Development and International Law*, Vol. 3, 1976
- Hodgson, R.D., Cooper, E.J., "The Technical Delimitation of a Modern EquiDistant Boundary," in *Ocean Development and International Law Journal*, Vol. 3, 1976
- Hollick, A.L., "U.S. Oceans Policy: The Truman Proclamations," *Virginia Journal of International Law*, Vol. 17, 1976
- Hudson, M.O., "The Registration and Publication of Treaties," *American Journal of International Law*, Vol. 19, 1925
- Hurst, C.J.B., "Whose is the Bed of the Sea?," *British Yearbook of International Law*, Vol. 4, 1923-24
- Hutchinson, D.N., "The Concept of Natural Prolongation in the Jurisprudence Concerning Delimitation of Continental Shelf Areas," *British Yearbook of International Law*, Vol. 55, 1984
- Ikle, F.C., *How Nations Negotiate*, Evarston and London, New York, 1964
- Imbert, P.H., "La question des réserves dans la décision arbitrale du 30 Juin 1977 relative à la délimitation du plateau continental entre la République Française et le Royaume-Uni," *Annuaire Français de Droit International*, Vol. 24, 1978
- Inan, Y., "Aren't there any Turks in Western Thrace?," *Dis Polika-Foreign Policy*, Vol. 14, 1988

- International Hydrographic Office Circular of the International Hydrographic Conference (London, 1919), Monaco, 15 February 1923
- Ioannou, K., "Η Κύρωση και η Επικύρωση από την Ελλάδα της Σύμβασης των Ηνωμένων Εθνών για το Δίκαιο της Θάλασσας" [The Ratification by Greece of the Convention of the United Nations on the Law of the Sea], *To Αιγαίο Πέλαγος και το Νέο Δίκαιο της Θάλασσας* [The Aegean Sea and the New Law of the Sea], Perakis, S., (ed.), Sakoulas, Athens, 1996
- Ivrakis, S.G., "Observations on the Legal Protection of the Mineral and Biological Resources of the Sea beyond the Territorial Waters of Greece," in *Revue Hellénique de Droit International Public*, 1959
- Jacovides, A., "Three Aspects of the Law of the Sea: Islands, Delimitation and Dispute Settlement," *Marine Policy*, 1979
- Jaenicke, "The Role of Proportionality in the Delimitation of Maritime Zones," *Realism in Law-Making*, Essays on International Law in Honour of Willem Riphagen, Bos, A., and Siblesz, H., Martinus Nijhoff Publications, Dordrecht, 1986
- Jagota, S.P., "The Role of the International Law Commission in the Development of International Law," in *Indian Journal of International Law*, Vol. 16, 1976
- Jagota, S.P., *Maritime Boundary*, Publications of Ocean Development, Vol. 9, Martinus Nijhoff, The Hague, 1985
- Jayewardene, H.W., *The Regime of Islands in International Law*, Martinus Nijhoff Publishers, 1990, Dordrecht
- Jelavich, B., *History of the Balkans*, Vol. II, Cambridge University Press, Cambridge, 1988
- Jenks, C.W., *The Prospects of International Adjudication*, Oceana Publications, 1964
- Jennings, R.Y., *The Acquisition of Territory in International Law*, Manchester University Press, 1963
- Jennings, R.Y., "The Limits of Continental Shelf Jurisdiction: Some Possible Implications of the North Sea Judgment," in *International and Comparative Law Quarterly*, Vol. 18, 1969
- Johnson, D.H.N., "Acquisitive Prescription in International Law," *British Yearbook of International Law*, 1950
- Kapsis, Y. "Οι Τρεις Μέρες του Μάρτη, 1987" [The Three Days of March 1987], Nea Synora, Athens, 1990

- Karamanlis, K., *Αρχείο, Γεγονότα και Κείμενα-Κωνσταντίνος Καραμανλής-50 Χρόνια Πολιτικής Ιστορίας [Archive, Facts and Documents-Constantine Karamanlis-50 Years of Political History]*, Vols. 10-11, *Η Ελλάδα στην Ευρώπη, 1977-1980 [Greece in Europe, 1977-1980]*, K. Karamanlis Foundation - Ekdotiki Athinon, 1997
- Kariotis, Th., "The Case for a Greek Exclusive Economic Zone in the Aegean Sea," *Marine Policy*, 1990
- Karl, D.E., "Islands and the Delimitation of the Continental Shelf: A framework for Analysis," *American Journal of International Law*, Vol. 71, 1977
- Karl, D.E., "The Delimitation of the Aegean Continental Shelf: Equitable Principles and the Problem of Islands," in *"The Aegean Issues: Problems and Prospects"*, Foreign Policy Institute, Ankara, 1989
- Kartalis, I., *Ελληνικά Προβλήματα στον Αέρα από Διπλωματική, Στρατιωτική, Τεχνική και Νομική Σκοπιά [Greek Problems in the Air, from a Diplomatic, Military, Technical and Legal Point of View]*, presentation at a conference of ELIAMEP, 6 November 1987, Athens, 1989
- Katsoufros, Th., "Η Ελληνοϊταλική Συμφωνία της 24ης Μαΐου 1977 για την Οριοθέτηση της Υφαλοκρηπίδας του Ιονίου και οι Ενδεχόμενες Επιπτώσεις της στο Αιγαίο" [The Agreement between Greece and Italy of 24 May 1977 for the Delimitation of the Continental Shelf of the Ionian Sea and its Possible Implication in the Aegean], in *Αρμενόπουλος [Armenopoulos]*, 1980
- Katsoufros, Th., "Les différends Gréco-Turcs en mer Egée," in *Le différend Gréco-Turc*, L'Harmatan, Paris, 1988
- Kennedy, R.H., "Brief Geographical and Hydrographical Study of Straits which Constitute Routes for International Traffic," A/Conf. 13/6, Add. 1, 1957, UNCLOS I, *Official Records*, Vol. I, 1957
- Kinross, Lord, *Ataturk: The Rebirth of a Nation*, Weidenfeld and Nicolson, London, 1964
- Kiss, A., "Abuse of Rights," *Encyclopedia of Public International Law*, Installment 7, Bernhardt, R., (ed.), 1984
- Kitsikis, D., *Ιστορία του Ελληνοτουρκικού Χώρου, 1928-1973 [History of the Greek-Turkish Area, 1928-1973]*, Hestia, Athens, 1981
- Klemm, U.D., "Aegean Sea," *Encyclopedia of Public International Law*, Aalands Islands to Dumbarton, Vol. 1, Max Planck Institute for Comparative Public Law and International Law, North-Holland Publishing Company, Amsterdam, 1992

- Knight, G.H., *The Law of the Sea: Cases, Documents and Readings*, New York, 1980
- Koliopoulos, J.S., *Greece and the British Connection, 1935-1941*, Oxford University Press, Oxford, 1977
- Kolodny, E.Y., "La population des îles de la Grèce: Essai de géographie insulaire en Méditerranée Orientale," essay published by the Centre National de la Recherche Scientifique, EDISUD, Vol. I, Paris, 1974
- Kondis, B., *Greece and Albania*, IMXA, Thessaloniki, 1976
- Kondis, B., "The Problem of the Aegean Islands on the Eve of World War I and Great Britain," *Greece and Great Britain during World War I*, IMXA, 1985, p.49.
- Koni, H., "Turkish Foreign Policy before World War II," *Turkish Review Quarterly Digest*, Autumn 1988, p.11.
- Korandis, A.I., *Διπλωματική Ιστορία της Ευρώπης, 1919-1945 [Diplomatic History of Europe, 1919-1945]*, Vol. A, B1, B2, Eleutheri Skepsis, Athens, 1996
- Koulouris, M., "Η Επίδραση του Εδάφους στον Καθορισμό Αρμοδιοτήτων του Παρακτινίου Κράτους στη Θάλασσα και το Αιγαϊακό Πρόβλημα" [The Influence of the Territory on the Determination of the Jurisdiction of the Coastal State in the Sea and the Aegean Problem], *Νομικό Βήμα [Nomiko Vima]*, April-May 1978
- Kourkoulas, A., *Ίμια, Κριτική Προσέγγιση του Τουρκικού Παράγοντα [Imia, Critical Approach of the Turkish Factor]*, Sideris, Athens, 1997
- Koymen, A.F., "The Aegean Sea Continental Shelf problem: Presentation of the Turkish case," *International Business Lawyer*, Vol. 6, 1978
- Kramer, H., "Der Türkische EG-Beitrittsantrag und der "Griechische Faktor" [The Turkish Application to the EEC and the "Greek Factor], *Europa-Archiv*, November 1987
- Kramer, H., "The Greek-Turkish Dispute and its Implication for an Eventual Turkish Accession to the EC," *Future Relations Between Turkey and the European Community*, special supplement to *Türkische Wirtschaftswelt*, Vol. 4, Munich, 1988
- Kramer, H., "Turkey's Relations with Greece: Motives and Interests," *The Greek-Turkish Conflict in the 1990s*, Constanas, D., (ed.), Macmillan, 1992
- Kyriakides, S., *Constitutionalism and Crisis Government*, Philadelphia, 1968
- Kyriakou, M.X., *Η Κρίση στο Αιγαίο [The Aegean Crisis]*, Athens, 1986

- Kwiatkowska, B., *The 200 Mile Exclusive Economic Zone in the New Law of the Sea*, Martinus Nijhoff, Dordrecht, 1989
- Kwiatkowska, B., "Creeping Jurisdiction beyond 200 miles in the Light of the 1982 Law of the Sea Convention and State Practice," *Ocean Development and International Law*, Vol. 22, 1991
- Ladas, S., *The Exchange of Minorities, Bulgaria, Greece and Turkey*, New York, The MacMillan Company, 1932
- La Fayette, L., "The Award in the Canada-France Maritime Boundary Arbitration," *International Journal of Marine and Coastal Law*, Vol. 8, 1993
- Laipson, E., "Discussions," *The Aegean Issues: Problems and Prospects*, Foreign Policy Institute, Ankara, 1989
- Lall, A., *Modern International Negotiation. Principles and Practice*, Columbia University Press, New York, 1966
- Lagoni, R., "Agreements for Joint Development Pending Resolution of Boundaries," *American Journal of International Law*, Vol. 78, 1984
- La Pradelle, P.G., de, *La frontière: Etude de droit international*, Paris, 1928
- Lauterpacht, H., *The Function of Law in the International Community*, Clarendon Press, Oxford, 1933
- Lauterpacht, H., "Sovereignty over Submarine Areas," *British Yearbook of International Law*, Vol. 27, 1950
- Lauterpacht, H., "Freedom of the Seas: Implications of the Norwegian Fisheries Case," in *The Times*, 8 January 1952
- Lauterpacht, H., "International Law: Collected Papers of Hersch Lauterpacht," Volume I, *The General Works*, Lauterpacht, E., (ed.), Cambridge University Press, Cambridge, 1970
- Lazarides, N., "A War-Time Scenario in the Aegean," *Yearbook ELIAMEP*, 1988
- Lee Mikyoung, M., *The Validity of the December 1932 Protocol Delineating the Territorial Sea between Certain Greek Islands and the Turkish Coast Particularly with Regard to the Jurisdiction over the Islet of Imia/Kardak Rock*, Americal Law Division, Congressional Research Service: The Library of Congress, Washington, 17 June 1996
- Legault, L.H., and Hankey, B., "From Sea to Seabed: The Single maritime Boundary in the Gulf of Maine Case," *American Journal of International Law*, Vol. 79, 1985
- Leanza, U., *Saggi de Dirito Internazionale dela Navigazione*, Napoli, 1979

- Lenze, F., "L'affaire du plateau continental de la mer Egée," *Thesaurus Acroasium, The Law of the Sea with Emphasis on the Mediterranean Issues*, Vol. 17, 1991
- Lowe, A.V., "The Development of the Concept of the Contiguous Zone," *British Yearbook of International Law*, Vol. 52, 1981
- Macfie, A.L., *The Straits Question, 1908-1936*, IMXA, No. 236, 1993
- MacGibbon, I.C., "Customary International Law and Acquiescence," *British Yearbook of International Law*, 1957
- MacGibbon, I.C., "Estoppel in International Law," *International and Comparative Law Quarterly*, Vol. 7, 1958
- MacGinley, G.P., "Intervention in the International Court: The *Libya/Malta* case," *International and Comparative Law Quarterly*, Vol. 34, 1985
- Malloy, M.P., "An Analysis of the Jurisprudence of the International Court of Justice in Cases Concerning Boundaries," *Thesaurus Acroasium*, Thessaloniki, 1985
- Maniatopoulos, J.P., *Droit Aérien (Droit International-Droit Hellénique)*, Tôme premier, Droit Aérien International, Paris, Les Editions Internationales, 1946
- Manos, S., "Greece-Turkey, Questions," *To Bήμα [To Vima]*, 25 May 1988
- Manos, S., "Μία Προσέγγιση του Αιγαίου" [An Approach to the Aegean], *Σαμιζντάτ [Samizdat]*, Nr. XXXVII, 6 August 1997, p.5
- Marangos, N., *Καραμανλής-Ετσέβιτ, Κύπρος, Αιγαίο-Μοντρεά [Karamanlis-Ecevit, Cyprus, Aegean-Montreux]*, Epikairoitita, Athens, 1987
- March, J.E., "Turkey and the UNCLOS III: Reflections in the Aegean," in *the Aegean Issues: Problems and Prospects*, Foreign Policy Institute, Ankara, December 1989
- Markoyannis, Ch., *Αρχή Δεινών [Commencement of Calamities]*, Athens, 1981
- Martial, "State Control of the Airspace over the Territorial Sea and Contiguous Zone," *Canadian Bar Review*, 1952
- Mavris, N., *Sforza versus Sforza*, New York, 1943
- McDonald, R., [1], "Alliance Problems in the Eastern Mediterranean—Greece, Turkey and Cyprus: Part II," *Prospects for Security in the Mediterranean*, O'Neil, R., MacMillan Press in association with the International Institute for Strategic Studies, London, 1988
- McDonald, R., [2] "Greece: the Search for a Balance," *The World Today*, June 1988

- McDorman, T.L., Saunders, P.M., Vanderzaag, D.L., "The Gulf of Maine Boundary: Dropping Anchor or Setting a Course?," *Marine Policy*, Vol. 9, 1985
- McDorman, T.L., "The *Libya-Malta* Case: Opposite States Confront the Court," *Canadian Yearbook of International Law*, Vol. 24, 1986
- McDouglas, M.S., and Burke, W.T., *The Public Order of the Oceans— A Contemporary International Law of the Sea*, Yale University Press, New Haven, 1962
- McNair, *International Law Opinions*, Vol. I, II, *Peace*, Selected and Annotated by Lord McNair, Cambridge University Press, Cambridge, 1956
- McNair, *The Law of Treaties*, Clarendon Press, Oxford, 1961
- McRae, D.M., "Delimitation of the Continental Shelf between the United Kingdom and France: The Channel Arbitration," *The Canadian Yearbook of International Law*, Vol. 15, 1977
- McWhinney, E., *Judicial Settlement of International Disputes, Jurisdiction, Justiciability and Judicial Law-Making on the Contemporary International Court*, Martinus Nijhoff, Dordrecht, 1991
- Merrills, J.G., "Images and Models in the World Court: The Individual's Opinions in the North Sea Continental Shelf Cases," *The Modern Law Review*, Vol. 41, 1978
- Merrills, J.G., "The Optional Clause Today," *British Yearbook of International Law*, Vol. 50, 1979
- Merrills, J.G., "The United Kingdom-France Continental Shelf Arbitration," *California Western International Law Journal*, Vol. 10, 1980
- Merrills, J.G., *International Dispute Settlement*, Second Edition, Grotius Publications, Cambridge, 1991
- Meynardus, R., "Griechenlands Gestoerte Verhaeltnis zur NATO," *Europa-Archiv*, 1982
- Meynardus, R., "Eine Neue Phase im Zypern Konflikt," *Europa-Archiv*, 1984
- Meynardus, R., "Die Griechischin-Türkische Minderheitsfrage," *Orient*, 26.Jahrgang, Nr. 1, März, 1985
- Meynardus, R., "Eine Neue Phase in der Griechischtürkischen Beziehungen," *Europa Archiv*, 1988
- Michael, M., [1], *Η Υφαλοκρηπίδα των Ελληνικών Νησιωτικών Συμπλεγμάτων του Αιγαίου και το Διεθνές Δίκαιο* [The Continental Shelf of the Greek Groups of Islands of the Aegean and International Law], Vol. I, II, Sakkoulas, Athens-Komotini, 1983

- Michail, M., [2], *Τα Αρχαιολογικά και Ιστορικά Αντικείμενα της Υφαλοκρηπίδας. Το Διεθνές Δίκαιο και το Αιγαίο* [Archaeological and Historical Objects of the Sea-Bed. International Law and the Aegean], Athens, Sakoulas, 1983
- Mosler, "Problems and Tasks of International Judicial and Arbitral Settlement," *Judicial Settlement of International Disputes*, Mosler and Bernhardt, (eds.), 1974
- Mosler, "The area of Justiciability," *Essays in International Law in Honour of Judge Manfred Lachs*, Macarczyk, (ed.), 1984
- Mouskheli, M., "L'équité en droit international moderne," *Revue Générale de Droit International Public*, 1933
- Mouton, M.W., *The Continental Shelf*, Martinus Nijhoff, The Hague, 1952
- Murty, B.S., *The International Law of Diplomacy, the Diplomatic Instrument and the World Public Order*, Martinus Nijhoff, New Haven, 1989
- Nader, L., and Starr, J., "Is Equity Universal?," in *Equity in the World's Legal Systems, A Comparative Study*, Newman, R.A., (ed.), 1973
- Nandan, S.N., and Anderson, D.H., "Straits Used for International Navigation: A Commentary on Part III of the United Nations Convention on the Law of the Sea," *BYBIL*, 1989
- Nelson, L.D.M., "Equity and Maritime Boundaries," *Revue Iranienne des Relations Internationales*, Vol. 11-12, 1978
- Nelson, L.D.M., "The Relationship between the Exclusive Economic Zone and the Continental Shelf," *International Law Association*, Report to the 62nd Conference, Seoul, 1986
- Nelson, L.D.M., "The Roles of Equity in the Delimitation of Maritime Boundaries," *American Journal of International Law*, Vol. 84, 1990
- Nickolson, H., *Diplomacy*, Thornton Butterworth, London, 1939
- Nikolaou, Y., *Ο Διάπλους των Τουρκικών Στενών κατά τις Διεθνείς Συνθήκες και την Πρακτική* [The Passage through the Turkish Straits According to the International Treaties and Practice], Sideris, Athens, 1995
- Nguyen Q.D., Dailler, P., Pellet, A., *Droit International Public*, 4e edition, Librairie Générale de Droit et de Jurisprudence, Paris, 1992
- Nordquist, M.H., (ed.), *United Nations Convention on the Law of the Sea 1982, a Commentary*, Vol. I, Centre for Ocean Law and Policy, Martinus Nijhoff, Dordrecht, 1985
- Nordquist, M.H., (ed.), *United Nations Convention on the Law of the Sea 1982, a Commentary*, Vol. V, Centre for Ocean Law and Policy, Martinus Nijhoff, Dordrecht, 1989

- Northedge, F.S., and Donelan, M.D., *International Disputes—The Political Aspects*, The David Davies Memorial Institute of International Studies, Europa Pbls., London, 1971
- O'Connell, D.P., *State Succession*, Vol. II, Cambridge University Press, Cambridge, 1967
- O'Connell, D.P., *International Law*, Vol. I, Second Edition, Stevens and Sons, London, 1970
- O'Connell, D.P., *The Influence of Law on Sea Power*, Manchester University Press, 1975
- O'Connell, D.P., *The International Law of the Sea*, Vol. I and II, Shearer, (ed.), Clarendon Press, Oxford, 1982
- Oda, S., "The Concept of the Contiguous Zone," *International and Comparative Law Quarterly*, 1962
- Oda, S., *International Control of Sea Resources*, Sijthoff, Leiden, 1963
- Oda, S., "Some Observations on the International Law of the Sea," *Japanese Annual of International Law*, Vol. 11, 1967
- Oda, S., "Boundary of the Continental Shelf," *Japanese Annual of International Law*, Vol. 12, 1968
- Oda, S., *The International Law of the Ocean Development*, Vol. I and II, Sijthoff, Leyden, 1972
- Oda, S., and Gormley, P., *The Law of the Sea in Our Time: New Developments, 1966-1975*, Leyden, 1977
- Oda, S., "Delimitation of a Single Maritime Boundary: The Contribution of Equidistance to Geographical Equity in the Interrelated Domains of the Continental Shelf and the Exclusive Economic Zone," *International Law at the Time of its Codification*, Essays in honour of Roberto Ago, Giuffrè, Milano, 1987
- Onorato, W.T., "Apportionment of an International Common Petroleum Deposit," *International and Comparative Law Quarterly*, Vol. 17, 1968
- Oppenheim's *International Law*, 7th ed., Lauterpacht, H., (Ed.), Vol. I, Longmans, London, 1948
- Oppenheim's *International Law, Disputes, War and Neutrality*, 7th ed., Lauterpacht, H., (Ed.), Vol. II, Longmans, Green and Co., London, 1955
- Oppenheim's *International Law*, 9th ed., Jennings, R. Sir., Watts, A. Sir., (Eds.), Vol. I-Peace, Parts 1-4, Longman Group, Avon, 1992
- Ostreng, W., "Delimitation Agreements in Arctic Seas," *Marine Policy*, Vol. 10, 1986

- Ozgul & Arpat, "Structural Units of the Taurus Orogenic Belt and their Continuation in Neighbouring Regions," *Commission Internationale pour l'exploration scientifique de la mer Méditerranée*, Vol. 22, Monaco, 1973
- Owada, H., "Exclusive Economic Zone and Continental Shelf, the Relationship between the Exclusive Economic Zone and the Continental Shelf," *International Law Association*, 62nd Conference, Seoul, 1986
- Oxman, B.H., "The Third United Nations Conference on the Law of the Sea: The 1976 New York Session," *American Journal of International Law*, Vol. 71, 1977
- Oxman, B.H., "The Third United Nations Conference on the Law of the Sea: The 1977 New York Session," *American Journal of International Law*, Vol. 72, 1978
- Oxman, B.H., "The Third United Nations Conference on the Law of the Sea: The Seventh Session," *American Journal of International Law*, Vol. 73, 1979
- Oxman, B.H., "The Third United Nations Conference on the Law of the Sea: The Eighth Session," *American Journal of International Law*, Vol. 74, 1980
- Oxman, B.H., "The Third United Nations Conference on the Law of the Sea: The Ninth Session," *American Journal of International Law*, Vol. 75, 1981
- Padwa, D., "Submarine Boundaries," *International and Comparative Law Quarterly*, Vol. 9, 1960
- Palmer, A., *Kemal Atatürk*, Spere Books, London, 1991
- Papacosma, V., "Legacy of Strife between Greece and Turkey, and the Aegean," in *Studia Diplomatica*, 1984
- Papadimitriou, G., *Η Διαφορά για την Υφαλοκρηπίδα του Αιγαίου και το Κυπριακό Πρόβλημα* [The difference over the Aegean Continental Shelf and the Cyprus Problem], Athens, 1975
- Papadimitriou, G., "Le problème de l' Egée dans son contexte international," *Revue de Politique Internationale*, Belgrade, 1978, No. 670
- Papakostas, A., "Η Ελληνική Αιγιαλitis Ζώνη" [The Greek Territorial Sea], *Εφημερίς Ελλήνων Νομικών* [Ephimeris Hellinon Nomikon], February 1958
- Papakostas, A., "La mer territoriale et la zone contigue," in *Revue Helénique de Droit International Public*, 1961

- Papacosta, Efthalia, "The question of the continental shelf of islands: The case of the Aegean Sea islands," *Revue Hellénique de Droit International Public*, Vol. 38, 1985-86
- Pazarci, Huseyin, *La délimitation du plateau continental et les îles*, Ankara, University of Ankara, 1982
- Pazarci, H., "Le concept de zone contigue dans la convention sur le droit de la mer de 1982," *Revue Belge de Droit International*, 1984-1985
- Pazarci, H., *Dogu Ege Adalarinin Askerden Arindirilmis Statüsü [The Demilitarization Status of the Islands of the Eastern Aegean]*, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayinlari, Ankara, 1986 (translation in Greek provided by ELIAMEP)
- Pazarci, H., *Le Contentieux Gréco-Turc en Mer Egée*, (pamphlet) Ankara, 1987
- Pazarci, H., "Aspect juridique des différends Gréco-Turcs en mer Egée," in *Le différend Gréco-Turc*, L'Harmatan, Paris, 1988
- Pazarci, H., "Différend Gréco-Turc sur le statut de certains îlots et rochers dans la mer Egée: Une réponse a Mr. C.P. Economides," *Revue Générale de Droit International Public*, 101, 1997
- Peters, P., and Tanja, G.J., "Lateral Delimitation of Continental Shelf and EEZ," Report of Netherlands Branch of ILA, Committee on the EEZ, 1984
- Petsalis-Diomidis, N., *Greece at the Paris Peace Conference, 1919*, IMXA, Thessaloniki, 1978
- Pharand, D., "Delimitation of Maritime Boundaries: Continental Shelf and Exclusive Economic Zone, in Light of the *Gulf of Maine Case*, Canada v. USA (1984)," *Revue Générale de Droit (Ottawa)*, 16, 1985
- Phylaktopoulos, A., "Mediterranean Discord: Conflicting Greek-Turkish Claims on the Aegean Sea-Bed," *International Lawyer*, Vol. 8, 1974
- Platzöder, R., *Third United Nations Conference on the Law of the Sea*, Vol. IV, Instituts für Internationale Angelegenheiten der Universität Hamburg und Deutscher Verein für Internationales Seerecht, Oceana Publications, Hamburg, 1983
- Platzöder, R., *Third United Nations Conference on the Law of the Sea*, Vol. IX, Instituts für Internationale Angelegenheiten der Universität Hamburg und Deutscher Verein für Internationales Seerecht, Oceana Publications, Hamburg, 1986
- Platzöder, R., *Third United Nations Conference on the Law of the Sea*, Vol. XII, Instituts für Internationale Angelegenheiten der Universität Ham-

- burg und Deutscher Verein für Internationales Seerecht, Oceana Publications, Hamburg, 1987
- Platzöder, R., *Third United Nations Conference on the Law of the Sea*, Vol. XVI, Instituts für Internationale Angelegenheiten der Universität Hamburg und Deutscher Verein für Internationales Seerecht, Oceana Publications, Hamburg, 1988
- Politakis, G.P., "The French-Canadian Arbitration Around St. Pierre and Miquelon: Unmasked Opportunism and the Triumph of the Unexpected," *International Journal of Marine and Coastal Law*, Vol. 8, No.1, 1993
- Politakis, G.P., "The Aegean Agenda: Greek National Interests and the New Law of the Sea Convention," *The International Journal of Marine and Coastal Law*, Vol. 10, No.4, 1995
- Prescott, J.R.V., *The Maritime Political Boundaries of the World*, Methuen, London, 1985
- Prescott, J.R.V., "Straight and Archipelagic Baselines," in *Maritime Boundaries and Ocean Resources*, Blake, G., (Ed.), Barnes and Noble, New Jersey, 1987
- Pridham, G., "Linkage Politics Theory and the Greek-Turkish Rapprochement," in *The Greek-Turkish Conflict in the 1990s*, Constanas, D., (ed.), Macmillan, 1992
- Psomiades, H., *The Eastern Question; The Last Phase. A Study in Greek Turkish Diplomacy*, Institute for Balkan Studies, IMXA, Thessaloniki, 1968
- Queneudec, J.P., "L'affaire de la délimitation du plateau continental entre la France et le Royaume-Uni," *Revue Générale de Droit International Public*, 83, 1979
- Ralston, J.H., *The Law and Procedure of International Tribunals*, London, 1926
- Reeves, J.E., "The Codification of the Law of Territorial Waters," *American Journal of International Law*, Vol. 24, 1930
- Reisman, W.M., "The Regime of Straits and National Security: An Appraisal of International Lawmaking," *American Journal of International Law*, Vol. 74, 1980
- Reisman, W.M., and Westerman, G.S., *Straight Baselines in International Maritime Boundary Delimitation*, McMillan Press Ltd., London, 1992
- Reuter, P., "Quelques réflexions sur l'équité en droit international," *Revue Belge de Droit International*, 1980

- Reuter, J.P., "Une ligne unique de délimitation des espaces maritime?," *Mélanges Georges Perrin, Recueil de Travaux offerts à M. Georges Perrin, Professeur Honoraire à l'Université de Lausanne*, Université de Lausanne, Faculté de Droit, Dutoit, B., Grisel, E., (pbs.), Diffusion Payot Lausanne, 1984
- Reuter, J.P., *Introduction au droit des traités*, Presses Universitaires de France, Paris, Genève, 1985
- Richardson, E.L., "Jan Mayen in Perspective," *American Journal of International Law*, Vol. 82, 1988
- Rigaldies, F., "L'affaire de la délimitation du plateau continental entre la République française et le Royaume-Uni de Grande Bretagne et d'Irlande du Nord," *Journal de Droit International*, Vol. 106, 1979,
- Robol, R.T., "The Aegean Continental Shelf Case," *Harvard International Law Journal*, Vol. 18, No. 3, 1977
- Rodino, D., *Western Europe and the Development of the Law of the Sea, Greece, 1913-1969*, Oceana Publications, Vol. II, issued January 1980
- Rosenne, S., *The Law and Practice of the International Court*, Martinus Nijhoff, Leyden 1965
- Rosenne, S., "Some Procedural Aspects of the English Channel Continental Shelf Arbitration," *Essays in Honour of Erik Calstren Celebrating His 75th Birthday*, Helsinki, 1979
- Rosenne, S., *Developments in the Law of Treaties, 1945-1986*, Cambridge University Press, Cambridge, 1989
- Rothpeller, T., "Equity in the North Sea Continental Shelf cases," *Nordisk Tidsskrift for International Ret*, Vol. 42, 1972
- Rothwell, D.R., "Coastal State Sovereignty and Innocent Passage: The voyage of the *Lusitania Expresso*," *Marine Policy*, 1992
- Roucek, Joseph.S., "The Legal Aspects of Sovereignty over the Dodecanese," *American Journal of International Law*, Vol. 38, 1944
- Roukounas, Emm., *Διεθνές Δίκαιο [International Law]*, Vol.II, Sakkoulas, Athens-Komotini, 1982,
- Roumbatis, Y., "Η Συμφωνία για την Επανένταξη της Ελλάδος στο NATO" [The Agreement for the Reintegration of Greece into NATO], *Το Βήμα [To Vima]*, 22 October 1978
- Rousseau, Ch., *Droit International Public*, Introduction et sources, Vol. I, Paris, 1970
- Rousseau, Ch., *Droit International Public*, 7eme edition, Dalloz, 1973

- Rousseau, Ch., "Chronique des faits internationaux, Grèce et Turquie, levée des restrictions établies en 1974 à la circulation aérienne entre les deux pays et reprise des vols le 14 juillet 1980", *Revue Generale de Droit International Public*, 1980
- Rousseau, Ch., "Chroniques des faits internationaux, Grèce et Turquie, état du différend entre les deux pays concernant la délimitation de la mer territoriale", *Revue Generale de Droit International Public*, 1982
- Rozakis, Ch., Tounta-Fergadi, A., Manolopoulou-Varvitsioti, C., Ioannou, E., *Η Αποστρατικοποίηση των Ελληνο-Τουρκικών Συνόρων [The Demilitarization of the Greek-Turkish Boundaries]*, Panteios Faculty of Political Science, Athens, 1977
- Rozakis, Ch., [1], "Ο Εναέριος Χώρος και οι Παράγωγες Διαφορές με την Τουρκία" [The Airspace Zone and the Relevant Differences with Turkey], *Οικονομία και Κοινωνία [Ikonomia ke Kinonia]*, Vol. 2, June 1979
- Rozakis Ch., [2], "Ο Επιχειρησιακός Έλεγχος και η Ελληνική Επιστροφή στο NATO" [The Air Operational Control and the Greek Reintegration into NATO], *Το Βήμα [To Vima]*, 23 December 1979
- Rozakis Ch., [3], "Η Διαφορά για την Οριοθέτηση της Υφαλοκρηπίδας του Αιγαίου" [The Difference over the Delimitation of the Continental Shelf of the Aegean], in *Το Αιγαίο και η Ελληνοτουρκική Κρίση [The Aegean and the Greek-Turkish Dispute]*, Athens, 1979
- Rozakis, C.L., and Stagos, P.N., *The Turkish Straits*, Martinus Nijhoff Publishers, Dordrecht, 1987
- Rozakis, Ch., "Το διεθνές Νομικό καθεστώς του Αιγαίου" [The international legal regime of the Aegean], in *Οι ελληνοτουρκικές σχέσεις, 1923-1987 [The Greek-Turkish relations, 1923-1987]*, Gnosi, Athens, 1988
- Rozakis, Ch., "An analysis of the legal problems in Greek - Turkish Relations," *Yearbook 1989, HELIAMEP*
- Rozakis Ch., [2], "Σε αναζήτηση του χαμένου χρόνου: Το δίκαιο της υφαλοκρηπίδας στην απόφαση του Διεθνούς Δικαστηρίου για τη Λιβύη-Μάλτα." [In search of the lost time: The law of the continental shelf as highlighted by the decision of the Court in the Libya-Malta case], Foundation for Mediterranean Studies, Athens, 1989
- Rozakis Ch., "Το καθεστώς των διεθνών στενών στη Σύμβαση του '82 και η εφαρμογή του στις ελληνικές θάλασσες" [The regime of International Straits in the 1982 Convention and its application in the Greek Seas], *To*

- Αιγαίο Πέλαγος και το Νέο Δίκαιο της Θάλασσας [The Aegean Sea and the new Law of the Sea]*, ed. Perakis, S., Sakoulas, Athens, 1996
- Russell, H.S., "The Helsinki Declaration: Brobdingnag or Lilliput," *American Journal of International Law*, Vol. 70, 1976, p.242.
- Ruster, (ed.), *Vertrage und Deklarationen über den Festlandsockel*, (Continental Shelf), Metzner, Frankfurt, 1975
- Salmon, J., "Le concept du raisonnable en droit international public," *Mélanges offerts à Paul Reuter*, Pedone, 1981
- Satow, E., *A Guide to Diplomatic Practice*, Fourth Edition, Bland, N., (ed.), Longmans, 1958
- Sazanides, Ch., *Οι Ελληνοτουρκικές Σχέσεις στην Πενταετία 1974-1978 [The Greek-Turkish Relations in a Period of Five Years 1974-1978]*, Thessaloniki, 1979
- Sazanides, Ch., "The Greco-Turkish Dispute Over the Aegean Airspace," *Hellenic Review of International Relations*, 1980
- Sazanides, Ch., *Ελλάδα, Τουρκία, NATO και ο Εναέριος Χώρος του Αιγαίου 1974-1986 [Greece, Turkey, NATO and the Aegean Airspace, 1974-1986]*, Thessaloniki, 1987
- Scelle, "Plateau continental et droit international," *Revue Générale de Droit International Public*, Vol. 59, 1955
- Schinas, G.G., "Εννοια και Καθορισμός των Ορίων Αιγιαλού κατά το παρ' ημίν Δίκαιον" [Meaning and Determination of the Limits of the Shore-line According to our Legal System] in *Επιθεώρησης Δημοσίου Δικαίου και Διοικητικής Επιστήμης [Epitheorisis Diikitikou Dikeou ke Diikitikis Epistimis]*, 1971
- Schneider, J., "The Gulf of Maine Case: the Nature of an Equitable Result," *American Journal of International Law*, Vol. 79, 1985
- Schwarzenberger, G., "Title to Territory: Response to a Challenge," *International Law in the Twentieth Century*, Leo Gross, (ed.), Appleton-Century-Crofts, New York, 1969
- Schwarzenberger, G., Brown, E.D., *A Manual of International Law*, 6th ed., Professional Books Ltd., 1976
- Sen, B., *A Diplomat's Handbook of International Law and Practice*, Second Edition, Martinus Nijhoff, The Hague, 1979
- Sezer, D. B., "Turkey's Security Policies," in *Greece and Turkey, Adversity in Alliance*, by Alford, J., (ed.), Institute of Strategic Studies, Adelphi Library 12, 1984
- Shaw, M. N., *International Law*, 3rd ed., Grotius Publications, 1991

- Shaw, S. And Kural Shaw, E., "History of the Ottoman Empire and Modern Turkey," Vol. I, II, Cambridge University Press, Cambridge, 1976-77
- Shawcross and Baumont, *Air Law*, Vol. 1, 4th ed., Butterworths, London, April 1991
- Sifounakis, N., *Τμβρος-Τένεδος, οι Τελευταίες Ελληνικές Ημέρες [Imbros-Tenedos, the Last Greek Days]*, Nea Synora-Livanis, Athens, 1996
- Sinclair, I., *The Vienna Convention on the Law of Treaties*, 2nd ed., Manchester University Press, Manchester, 1984
- Sinha, B.P., *Unilateral Denunciation of Treaty*, Martinus Nijhoff, The Hague, 1966
- Smith, L., *Ionian Vision*, Allen Lane, London, 1973
- Smith, R.W., "A Geographical Primer to Maritime Boundary Making," *Ocean Development. Issues in the Pacific Basin*, Miles, E.L., Allen, S., (eds.), Honolulu, 1983
- Sohn, L.B., "United Nations Decision-Making: Confrontation or Consensus," *Harvard International Law Journal*, Vol. 15, 1974
- Sohn, L.B., "Peaceful Settlement of Disputes," *Encyclopedia of International Law, Settlement of Disputes*, Vol. 1, Max Planck Institute for Comparative Public Law and International Law, North-Holland Publishing Company, Amsterdam, 1981
- Soltarides, S., *Από την Κρίση του Μαρτίου 1987, στο Νταβός 1988 [From the Crisis of March 1987 to Davos 1988]*, Hestia, Komotini, 1988
- Soysal, Ismail, "1936 Montreux Convention," *Bogazlardan Geçiş Güvenliği ve Montreux Sözleşmesi [Safety Navigation through Straits and the Montreux Convention]* Istanbul Üniversitesi Hukuk Fakültesi, Istanbul, 1994
- Soysal, M., "Concluding Remarks," *The Aegean Issues: Problems and Prospects*, Foreign Policy Institute, Ankara, 1989, pp.50-54
- Spyropoulos, I., *Δημόσιον Διεθνές Δίκαιον [Public International Law]*, 2nd ed., Pysros, Athens, 1940
- Stavrinos, M., *Το Πρόβλημα της Υφαλοκρηπίδας του Αιγαίου [The Problem of the Continental Shelf of the Aegean]*, Sakkoulas, Athens-Komotini, 1986
- Stavropoulos, C.A., "Procedural Problems of the Third Conference on the Law of the Sea," *Unitar News*, 6, 1974
- Stein, T.L., "The Libyan-Tunisian Continental Shelf Case: The Impact of New Trends in the Law of the Sea on Delimitation of Maritime Boundaries," *Proceedings of the American Society of International Law*, Vol. 76, 1982

- Stein, T.L., "The Approach of a Different Drummer: The Principle of the Persistent Objector in International Law," *Harvard Journal of International Law*, Vol. 26, 1985
- Stevenson, J.R., and Oxman, B.H., "The Third United Nations Conference on the Law of the Sea," *American Journal of International Law*, Vol. 68, 1974
- Stevenson, J.R., and Oxman, B.H., "The Third United Nations Conference on the Law of the Sea: The 1975 Geneva Session," *American Journal of International Law*, Vol. 69, 1975
- Strati, A., "The Ratification by Greece of the U.N. Convention on the Law of the Sea," *Leiden Journal of International Law*, Vol. 9, 1996
- Svolopoulos, C., "La Grèce et son droit légitime de militariser Lemnos et Samothrace: Un problème artificiel à la lumière de nouveaux témoignages historiques," *Balkan Studies*, Vol. 26, No. 2, 1985
- Symmons, C.R., *The Maritime Zones of Islands in International Law*, Martinus Nijhoff, The Hague, 1979
- Symmons, C.R., "Maritime Boundary Disputes in the Irish Sea and the Northeast Ocean," *Marine Policy Reports*, p.1, 1986
- Syrgios, A., "Με Φιλικά Αισθήματα από την Τουρκική Εθνοσυνέλευση..." [From the National Assembly of Turkey in a Spirit of Friendship...], *Οικονομικός Ταχυδρόμος [Economicos Tachydromos]*, 6 July 1995
- Sztucki, J., *Interim Measures in the Hague Court*, Kluwer Publications, The Netherlands, 1983
- Tanja, G., *The Legal Determination of International Maritime Boundaries*, Kluwer Law and Taxation Publishers, The Netherlands, 1990
- Theodorakopoulos, P.V., *Το Ισχύον εν Δωδεκανήσω Δίκαιον [The Valid Law of the Dodecanese]*, Athens, 1964
- Thirlway, H.W.A., *Non-Appearance before the International Court of Justice*, Cambridge University Press, Cambridge, 1985
- Thucydides, *Historiae*, Book A'
- Toluner, S., "Rights and Duties of Turkey Regarding Ships in Transit through the Straits," *Bogazlardan Geçis Güvenligi ve Montreux Sözleşmesi [Safety Navigation through Straits and the Montreux Convention]*, Istanbul Üniversitesi Hükük Facültesi, Istanbul, 1994
- Toynbee, A., *The Greeks and their Heritages*, Oxford University Press, Oxford, 1981
- Umar, S., "An Analysis of the Aegean Crisis," *Contemporary Review*, September 1982

- United Nations, *The Blue Helmets*, Second Edition, United Nations Department of Public Information, 1990
- Valinakis, Y., in "Ελληνοτουρκικές Σχέσεις: Εκτιμήσεις, Προτάσεις, Θέσεις" [*Greek-Turkish Relations: Opinions, Proposals, Views*], ELIAMEP, Conference, April 1986, Athens, 1986
- Valinakis, Y., *Εξωτερική Πολιτική και Εθνική Άμυνα, 1974-1987: Η Ελλάδα στο Σύστημα Ανατολής Δύσης* [*Foreign Policy and National Defense, 1974-1987: Greece in between East-West*], Thessaloniki, 1987
- Valinakis, Y., "The Strategic Importance of Greece," *Yearbook 1988*, ELIAMEP, Athens, 1989.
- Vallat, F.A., "The Continental Shelf," *British Yearbook of International Law*, 1946
- Vattel, E. de., *Les Droit des Gens*, 3 books in 2 vols., new edition (1774), *Classics of International Law*, ed. 1916, Vol. II.
- Veremis, Th., *Greek Security Considerations: A Historical Perspective*, Athens, Papazisis, Athens, 1982
- Veremis, Th., and Tsitsopoulos, Y., (eds.), *Ελλάδα-Τουρκία, Αρθρογραφικός Δείκτης Αμυντικής και Εξωτερικής Πολιτικής 1979-1985* [*Greece-Turkey, An Annotated Collection of Articles on Defense and Foreign Policy*], ELIAMEP, Athens, 1987
- Veremis, Th., "At Best, Perhaps Just Friendly Enemies," *The Middle East*, November, 1998
- Vicuna, F.O., *The Exclusive Economic Zone, Regime and Legal Nature under International Law*, Cambridge, 1989
- Villinger, M.E., *Customary International Law and Treaties*, Martinus Nijhoff Publishers, Dordrecht, 1985
- Voelckel, M., "Aperçu de quelques problèmes techniques concernant la délimitation de frontières maritimes," *Annuaire Français de Droit International*, 1979
- Wagstaff, J.M., "The Geographical Setting," in *Greece in the 1980's*, MacMillan Press in association with the Centre of Contemporary Greek Studies, King's College, London, 1983
- Waldock, H.M., "The Anglo-Norwegian Fisheries Case," *British Yearbook of International Law*, 1951
- Waldock, H.M., *The International Court and the Law of the Sea*, Cornelis van Vollenhoven Memorial Lecture, University of Leiden, 22 May 1979

- Weber, F.G., *The Evasive Neutral: Germany, Britain and the Quest for a Turkish Alliance in the Second World War*, University of Missouri Press, Columbia, 1979
- Weil, P., "Towards Relative Normativity in International Law?," *American Journal of International Law*, Vol. 77, 1983
- Weil, P., *The Law of Maritime Delimitation—Reflections*, Grotius Publications, Cambridge, 1989
- Weinstein, J.L., "Exchange of Notes," *British Yearbook of International Law*, Vol. 29, 1952
- Whiteman, M.M., "Conference on the Law of the Sea: Convention on the Continental Shelf," *American Journal of International Law*, Vol. 52, 1958
- Widdows, K., "The Unilateral Denunciation of Treaties Containing no Denunciation Clause," *British Yearbook of International Law*, 1982
- Wilson, A., "The Aegean Dispute," in *Greece and Turkey: Adversity in Alliance*, The International Institute for Strategic Studies, 1984
- Wlosowicz, Z., "The *Malta/Libya* Case: Shelf Delimitation by the Distance Principle and How to Influence Decisions without Intervening," *Cambridge Law Journal*, Vol. 44, 1985
- Woodhouse, C.M., *The Story of Modern Greece*, Faber and Faber, London, 1968
- Woodhouse, C.M., *Karamanlis: The Restorer of Greek Democracy*, Oxford, Clarendon Press, 1982
- Woodhouse, C.M., *Modern Greece: A Short History*, Faber and Faber, London, 1986
- Xydis, S., *Greece and the Great Powers, 1944-1947*, Institute for Balkan Studies (IMXA), Thessaloniki, 1963
- Yalourides, Ch., "Τα Βαλκανικά Κράτη, Γιουγκοσλαβία, Τουρκία, Ρουμανία, Βουλγαρία: Ιστορία, Πολιτικό Σύστημα, Εξωτερική πολιτική" [The Balkan States, Yugoslavia, Turkey, Romania, Bulgaria: History, Political System, Foreign Policy], in *Τα Βαλκάνια, το Σταυροδρόμι των Εξελίξεων* [The Balkans, the Crossroad of Developments], Roes, Athens, 1988
- Yangakis, G., "Οι Στατιστικές Μετρήσεις του Χώρου του Αρχιπελάγους της Δωδεκανήσου" [The Statistics of the Area of the Dodecanese Archipelagos], *Αιγαίοπελαγίτικα θέματα* [Aigaiopelagitika Themata—Topics on the Aegean Sea], Vol. 6, Athens, July-Sept. 1987

- Yangakis, G., *Νησιολόγιο των Κατοικουμένων Ελληνικών Νησιών, 1940-1991* [*Index of Islands of the Inhabited Greek Islands, 1940-1991*], Athens, 1995
- Yates, G.T., and Young, J.M., *Limits to National Jurisdiction over the Seas*, New York, 1974
- Yilmaz, T., "Turkish Current to the Greek Islands," *Hurriyet*, 19 April 1993
- Yokaris, A., *Εισαγωγή στο Διεθνές Δίκαιο του Αέρος και του Διαστήματος* [*Introduction to the International Air and Space Law*], Sakkoulas, Athens-Komotini, 1984
- Yokaris, A., *Οι Δικαιοδοσίες του Παράκτιου Κράτους στον Εναέριο Χώρο, Εθνικό και Διεθνές* [*The Jurisdiction of the Coastal State in the National and International Airspace*], Sakkoulas, Athens-Komotini, 1991
- Yokaris, A., *Διεθνές Δίκαιο Εναερίου Χώρου-Διαστήματος* [*International Air and Space Law*], Sakkoulas, Athens-Komotini, 1996
- Yolga, N., "Question de la démilitarisation du plateau continental de la mer Egée," in *The Aegean Issues: Problems and Prospects*, Foreign Policy Institute, December 1989
- Young, R., "The Geneva Convention on the Continental Shelf: A first impression," *American Journal of International Law*, Vol. 52, 1958
- Young, R., "Offshore Claims and Problems in the North Sea," *American Journal of International Law*, Vol. 54, 1965
- Zeginis, E., "Ελληνική Εκπαίδευση, η Κατάργησή της από τους Τούρκους, Βασικός Συντελεστής Εκπατρισμού των Ιμβρίων" [Greek Education, its Elimination by the Turks, the Basic Parameter of the Expatriation of the Imbrians], *Κοιτίδες Ελληνισμού, Ιμβρος, Τένεδος, Προποντίδα, Χάλκη* [*Birthplaces of Hellenism, Imbros, Tenedos, Propontida, Chalki*], Epta Imeres-Kathimerini, Athens, 1996
- Zoller, E., "L' affaire de la délimitation du plateau continental entre la République Française et le Royaume-Uni de Grande Bretagne et d'Irlande du Nord," *Annuaire Français de Droit International*, Vol. 23, 1977
- Zoller, E., "Recherche sur les méthodes de délimitation du plateau continental: A propos de l'affaire Tunisie-Libye," *Revue Générale de Droit International Public*, Vol. 86, 1982
- Zotiades, G., *Το Αιγαίον Αρχιπέλαγος και το Δίκαιον της Θαλάσσης* [*The Aegean Archipelagos and the Law of the Sea*], Athens, 1975

Miscellanea

- Borders, Sovereignty, Stability*, The Citizen's Movement, Melissa Media Associates, Inc., New Rochelle, New York, 1996
- Denying Human Rights and Ethnic Identity: The Greeks of Turkey*, A Helsinki Watch Report, by Human Rights Watch, United States of America, March 1992
- Ιστορία του Ελληνικού Έθνους* [History of the Greek Nation], Vol.A, , ΙΑ, ΙΕ, Ekdotiki Athinon, Athens, 1978-1980
- Manifesto of PASOK, Για μία Ανεξάρτητη Ελλάδα* [For an Independent Greece], PASOK Publications, Athens, September 1981
- Manoeuvres de l'OTAN: Impacts Politiques*, pamphlet, Bruxelles: Centre d' Etudes Internationales, Sociales et Politiques, Bruxelles
- NATO today: The Alliance in evolution*, A report to the Committee on foreign relations, US Senate, April 1982, 97th Congress, 2nd session
- Study on the Construction of Straight Baselines*, unpublished, study of the Legal Office of the Greek Ministry of Defence, for the use of this Ministry, Athens, 1984
- The Aegean Realities....*, published by the Association of Journalists, Istanbul, probably 1982.
- The Contribution of Greece to the Common Defence*, Hellenic Institute for Defence and Foreign Policy (pbis), Athens, 1987
- The Status Quo in the Aegean*, Institute for Political Studies, Athens
- The Turkish-Greek Relations and the Great Idea*, Prepared by the War History and Strategic Studies Directorate of the General Staff, Ankara, 1985
- Threat in the Aegean*, published by the Journalist's Union of the Athens Daily Newspapers, undated, probably between 1982-84
- Turkey, Greece and NATO: The Strained Alliance*, Staff Report to the Committee on Foreign Relations, U.S. Senate, March 1980, 96th Congress, 2nd session
- Turkish Officials Speak on Turkey's Aims*, Institute for Political Studies, Athens, 1983
- "Views on the Questions Between Greece and Turkey," *Diss Politika* [Foreign Policy], Vol. 10, 1985

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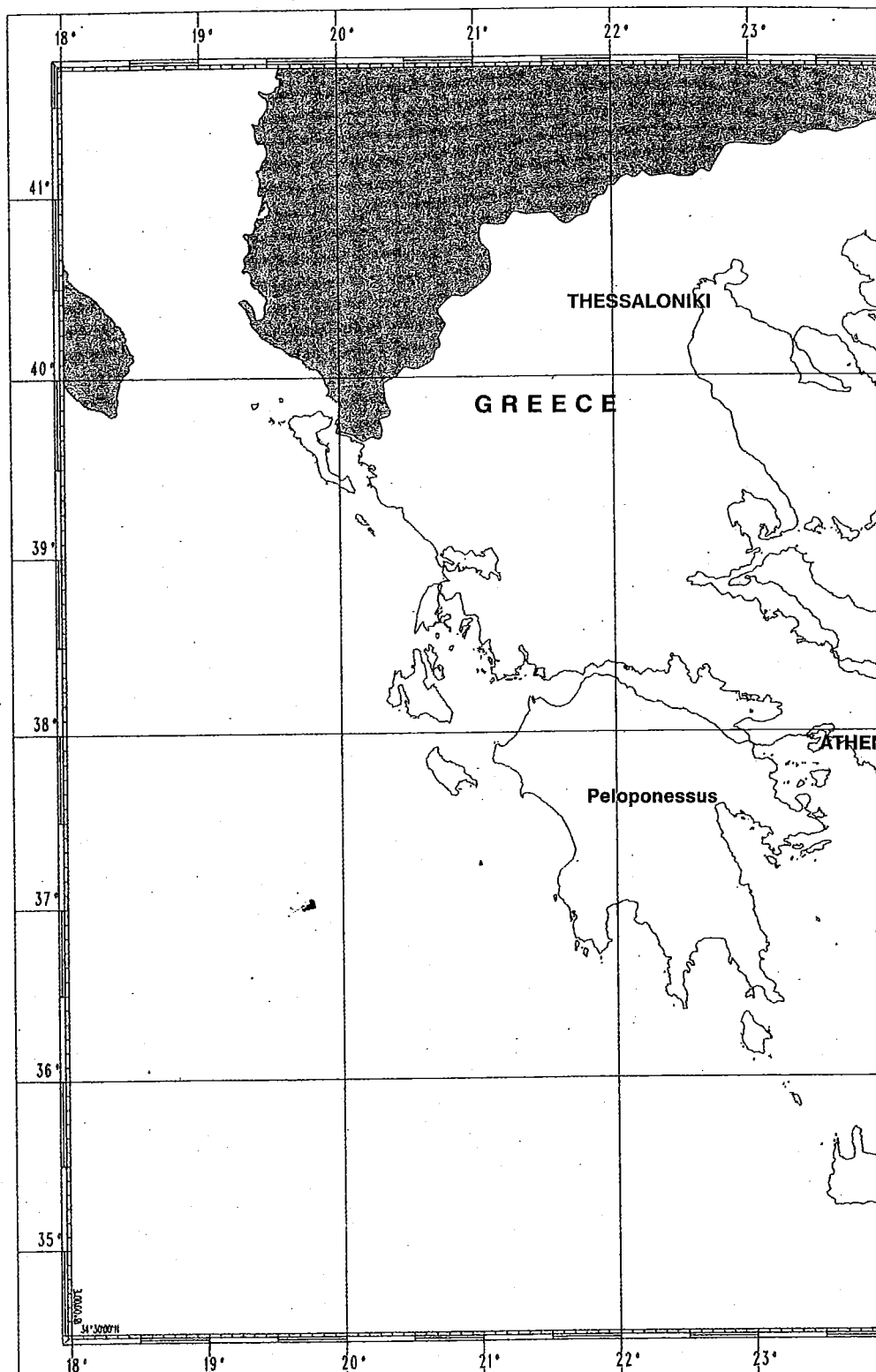
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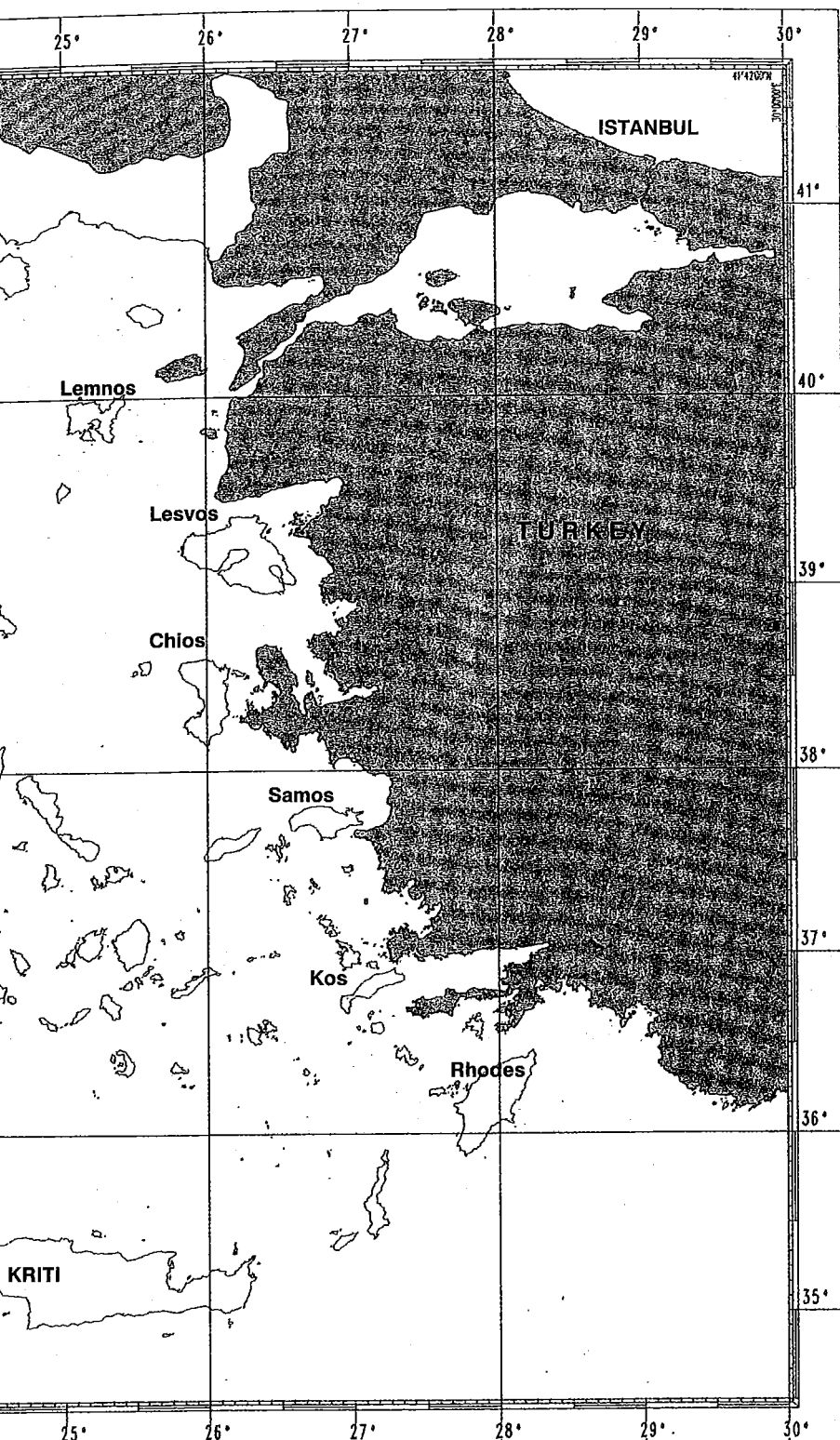
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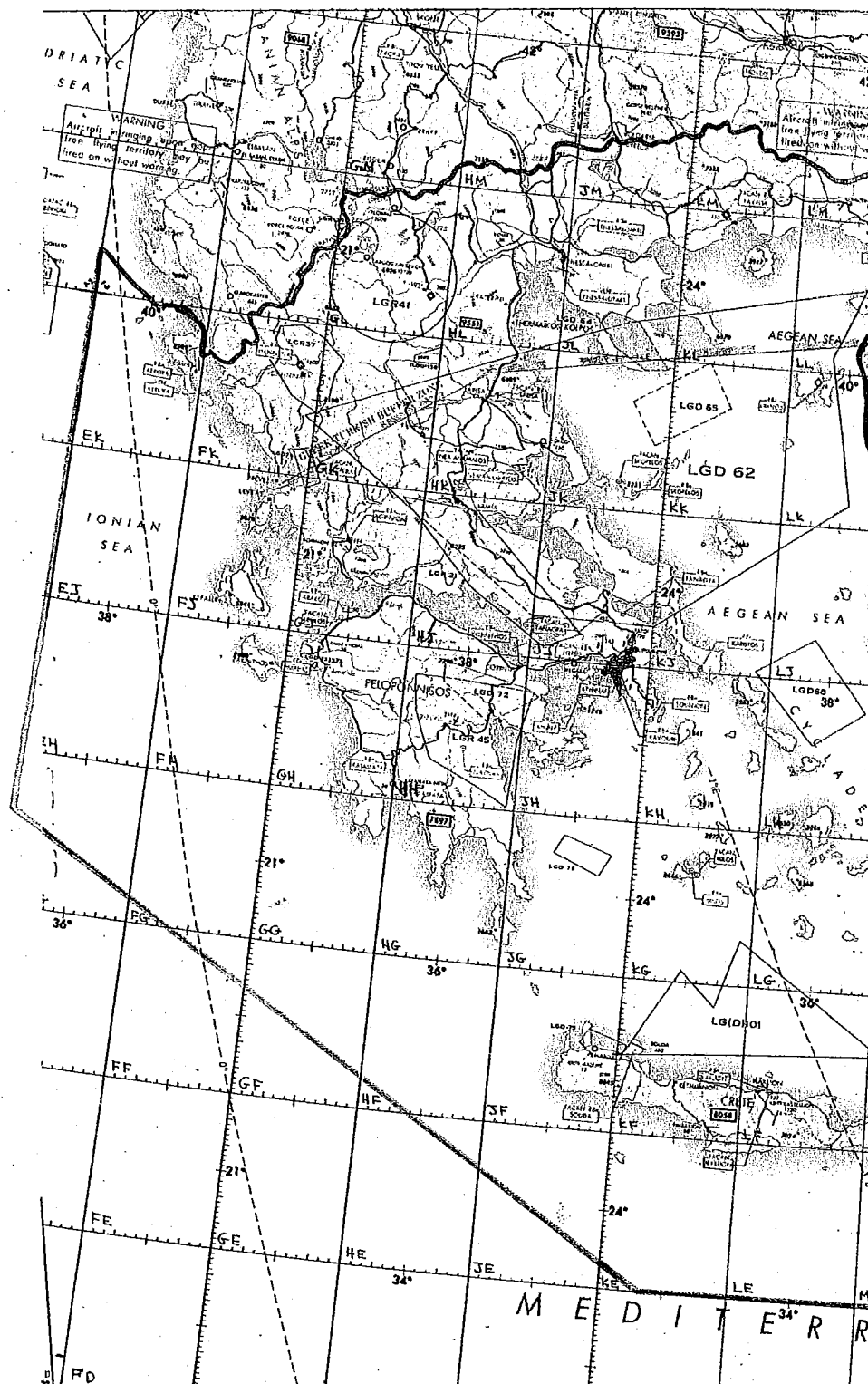
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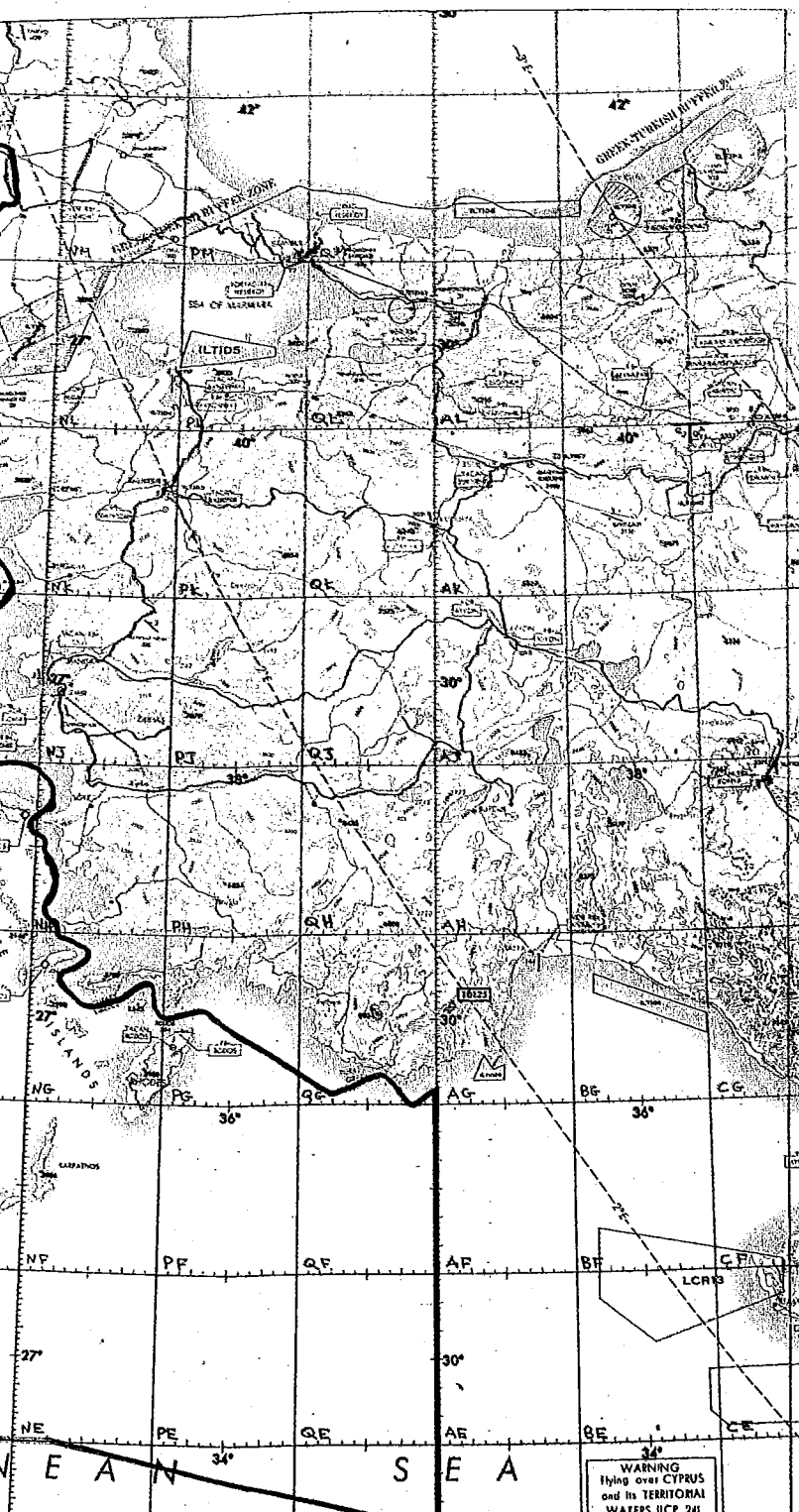
- 1. Map of the Aegean Sea**
- 2. Limits of the Athens FIR (Flight Information Region)**
- 3. The Aegean Sea, limits of territorial waters, Turkish claims on the continental shelf**
source: *Aegean Sea Continental Shelf Pleadings*, map attached to p.20
- 4. Turkish baselines in the Straits area**
- 5. Continental shelf boundary between Greece and Italy (1978)**
- 6. Territorial sea boundary between Turkey and Soviet Union (1973)**
based on a map in *The Law of the Sea: Maritime Boundary Agreements, 1970-1984*
- 7. Continental shelf boundary between Turkey and Soviet Union (1978)**
source: *The Law of the Sea: Maritime Boundary Agreements, 1970-1984*
- 8. Frontal maritime projections of «primary» and «secondary» coasts in the Gulf of Maine area.**
source: US Memorial, fig 31, *Gulf of Maine case*
- 9. The maritime boundary in the *St. Pierre and Miquelon* case**
- 10. The maritime boundary in the *Jan Mayen* case**
based on figure 1, Marston, G., «*St. Pierre and Miquelon arbitration*», *Marine Policy* 1993
- 11. The Aegean Sea in case of extension of the territorial sea to 12 miles**
- 12. The Imia/Kardak area**
source: US National Imagery and Mapping Agency, Map Nr. 54418, 1st ed. August 1950
- 13. A proposed solution for the extension of the territorial waters limit to 12 miles and the high seas corridors**

MAPS



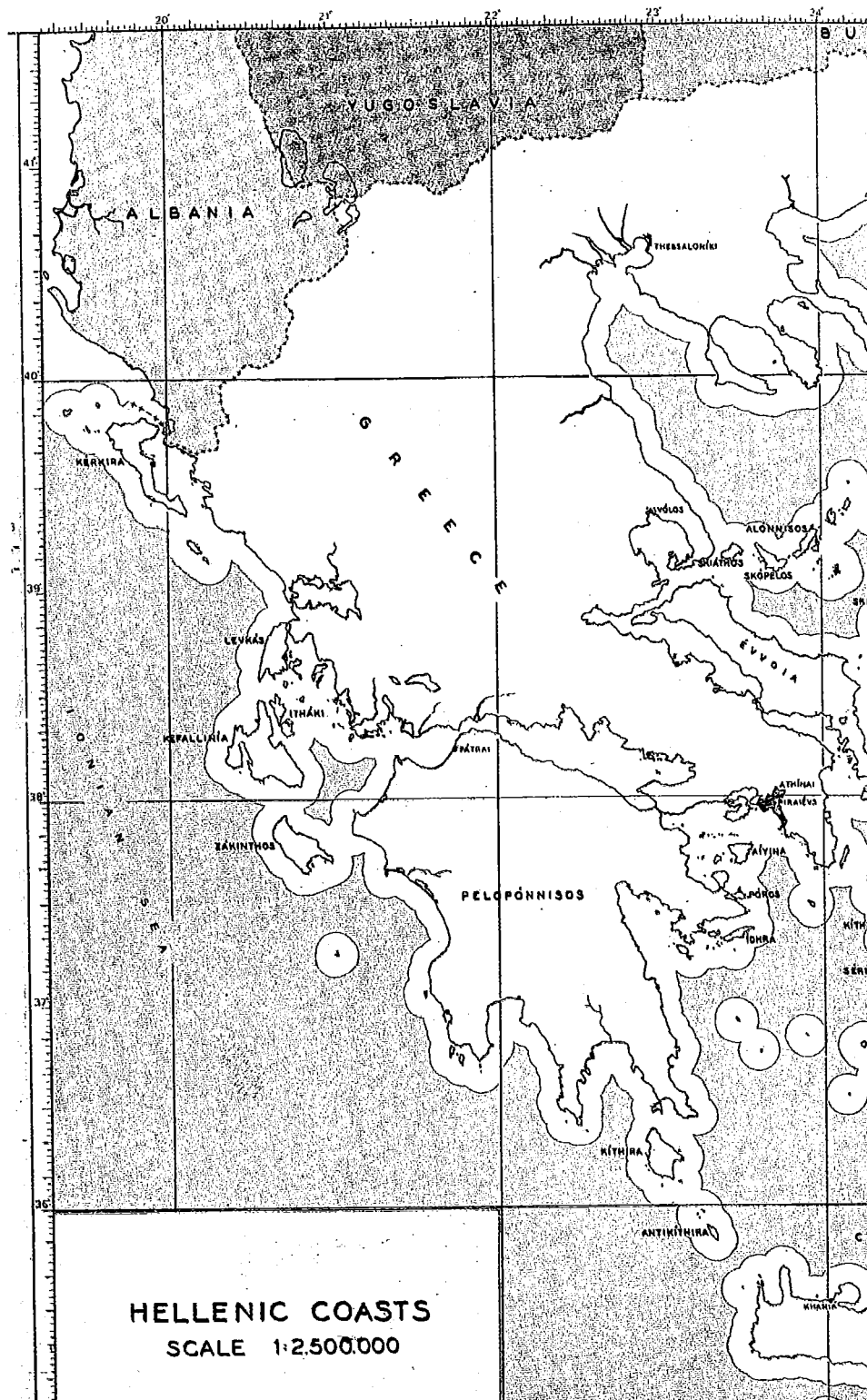


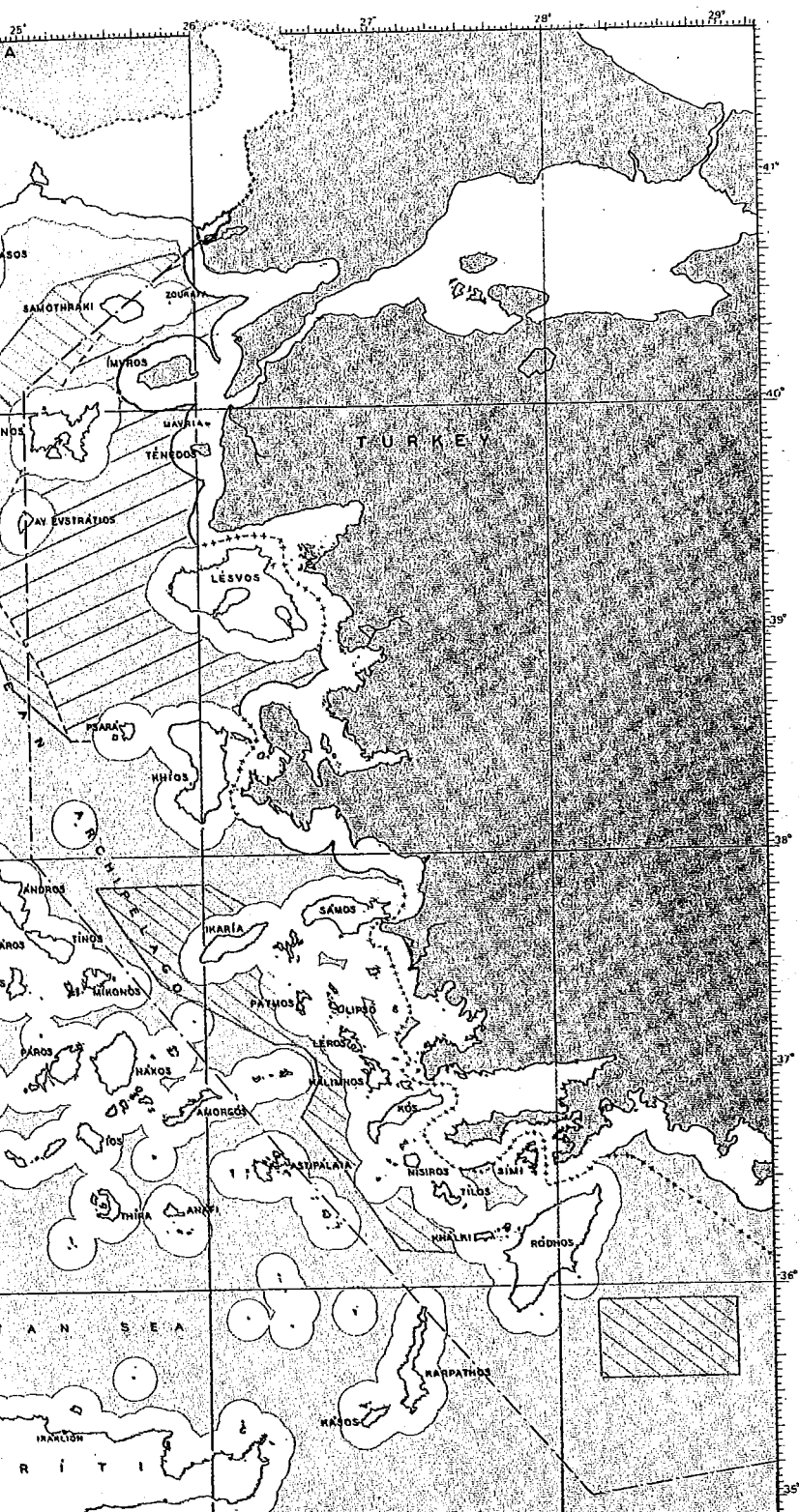


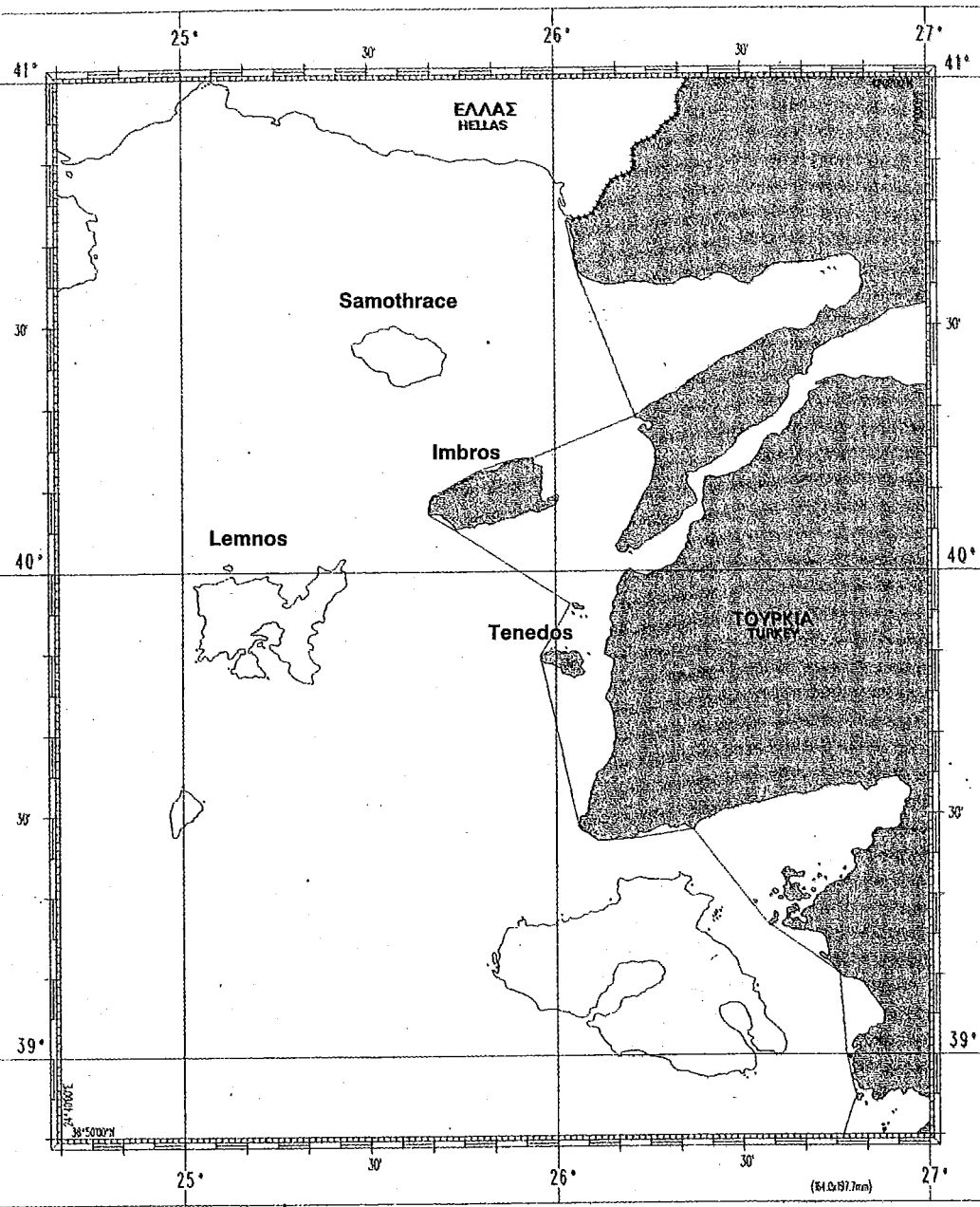


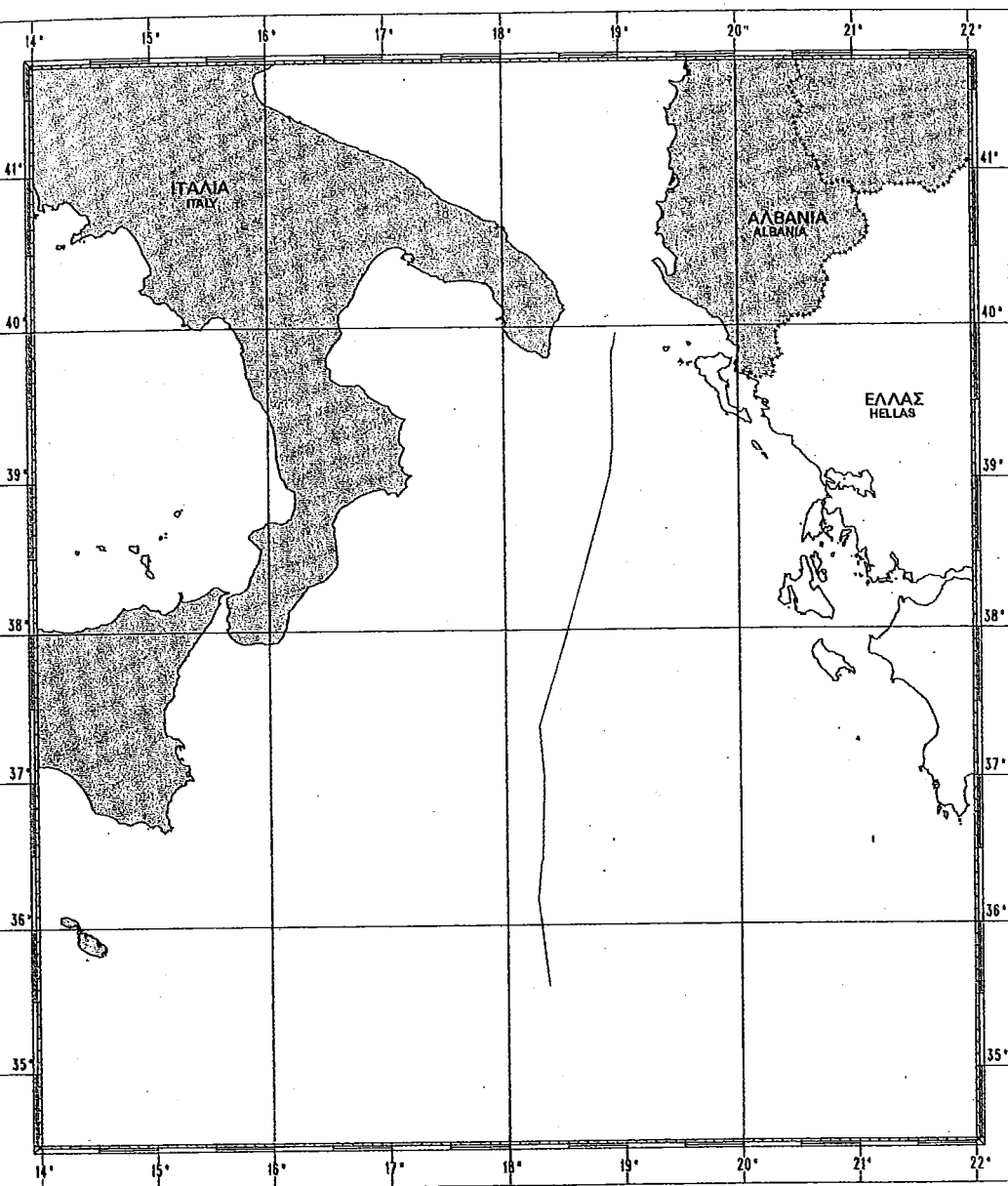
WARNING
Flying over CYPRUS
and its TERRITORIAL
WATERS ICP 241

WYOMER VAE









BLACK
SEA

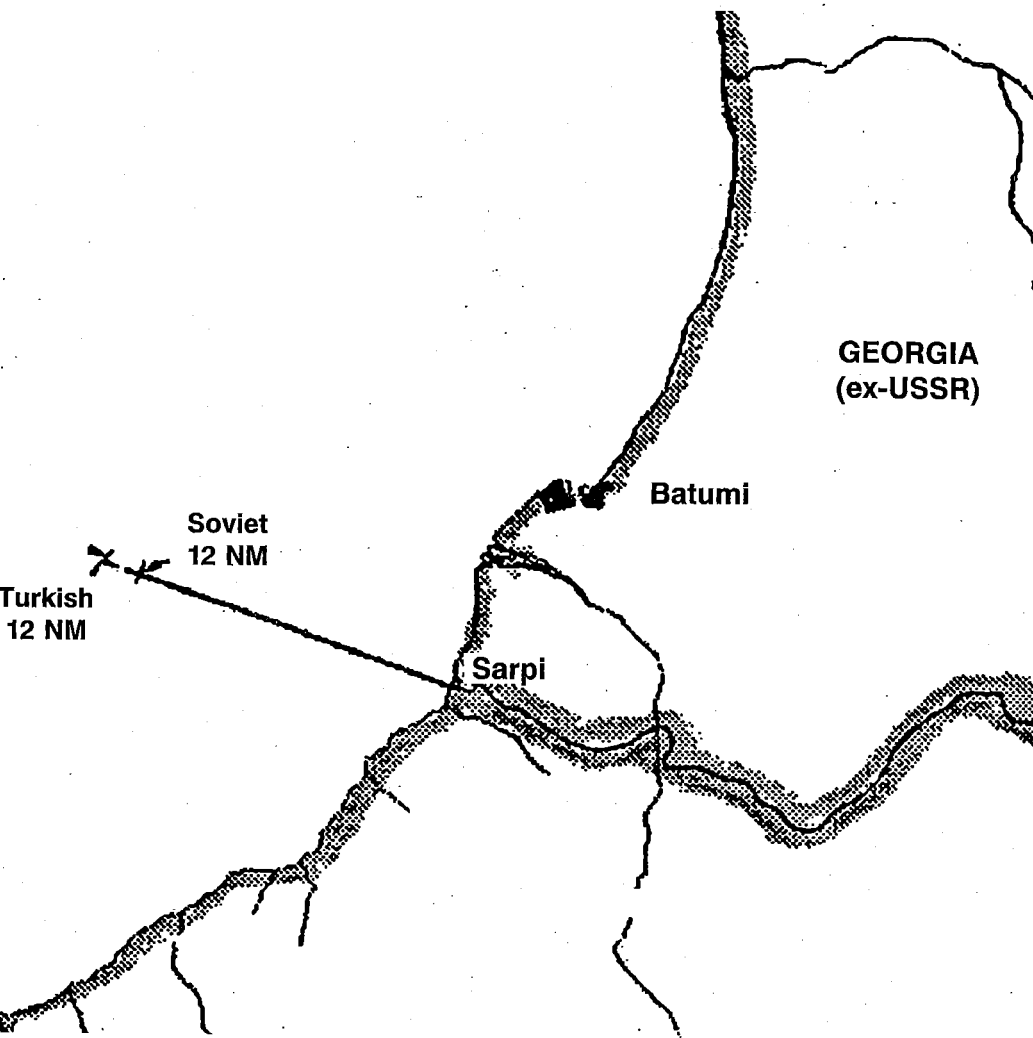
GEORGIA
(ex-USSR)

Batumi

Soviet
12 NM

Turkish
12 NM

Sarpi



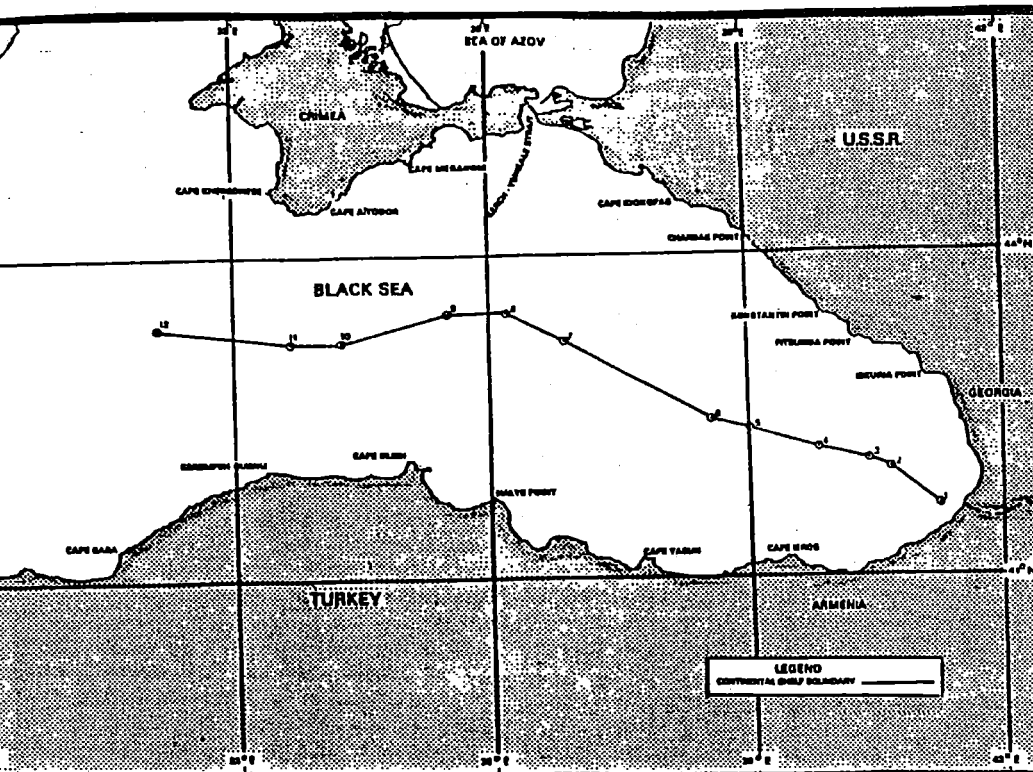
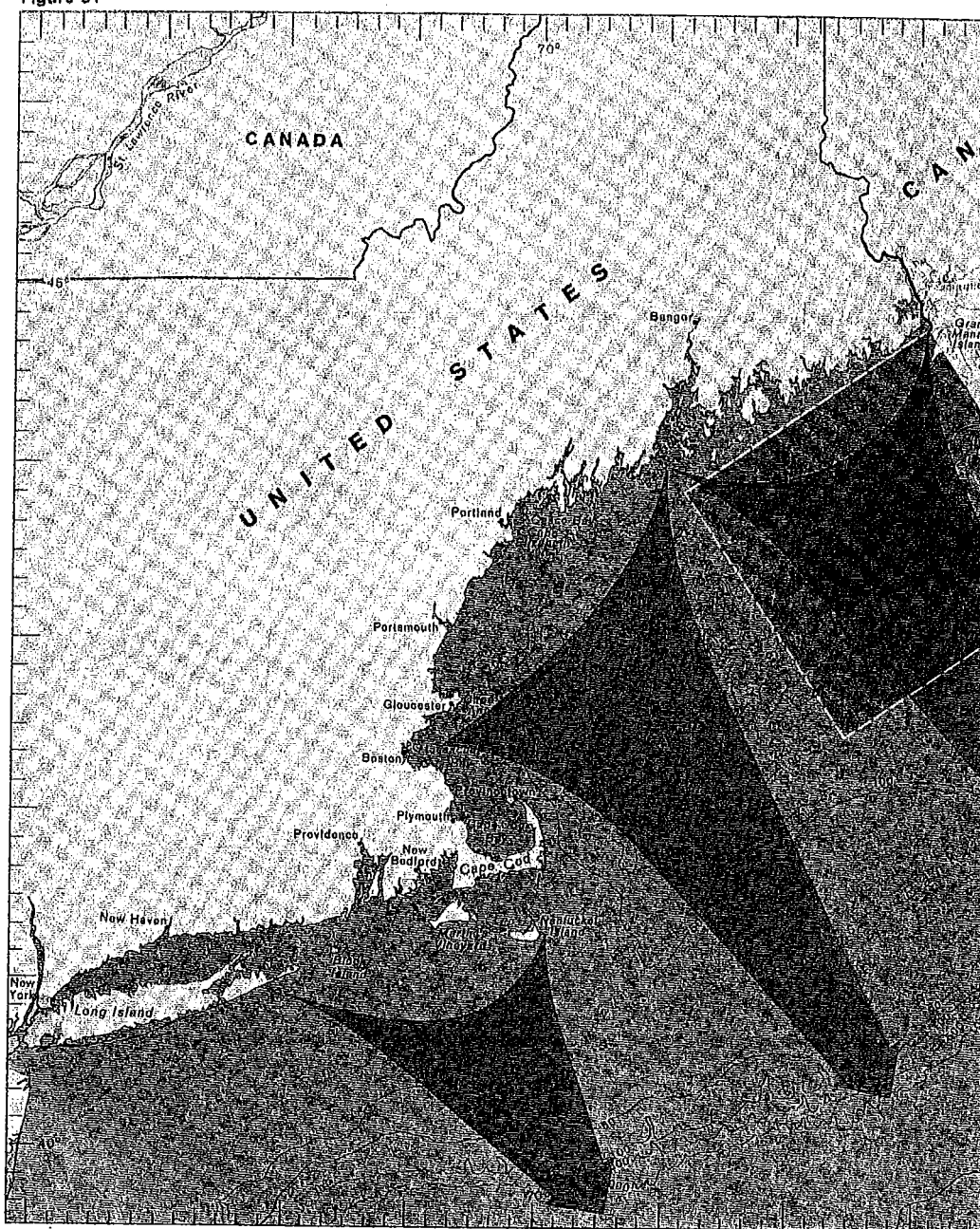
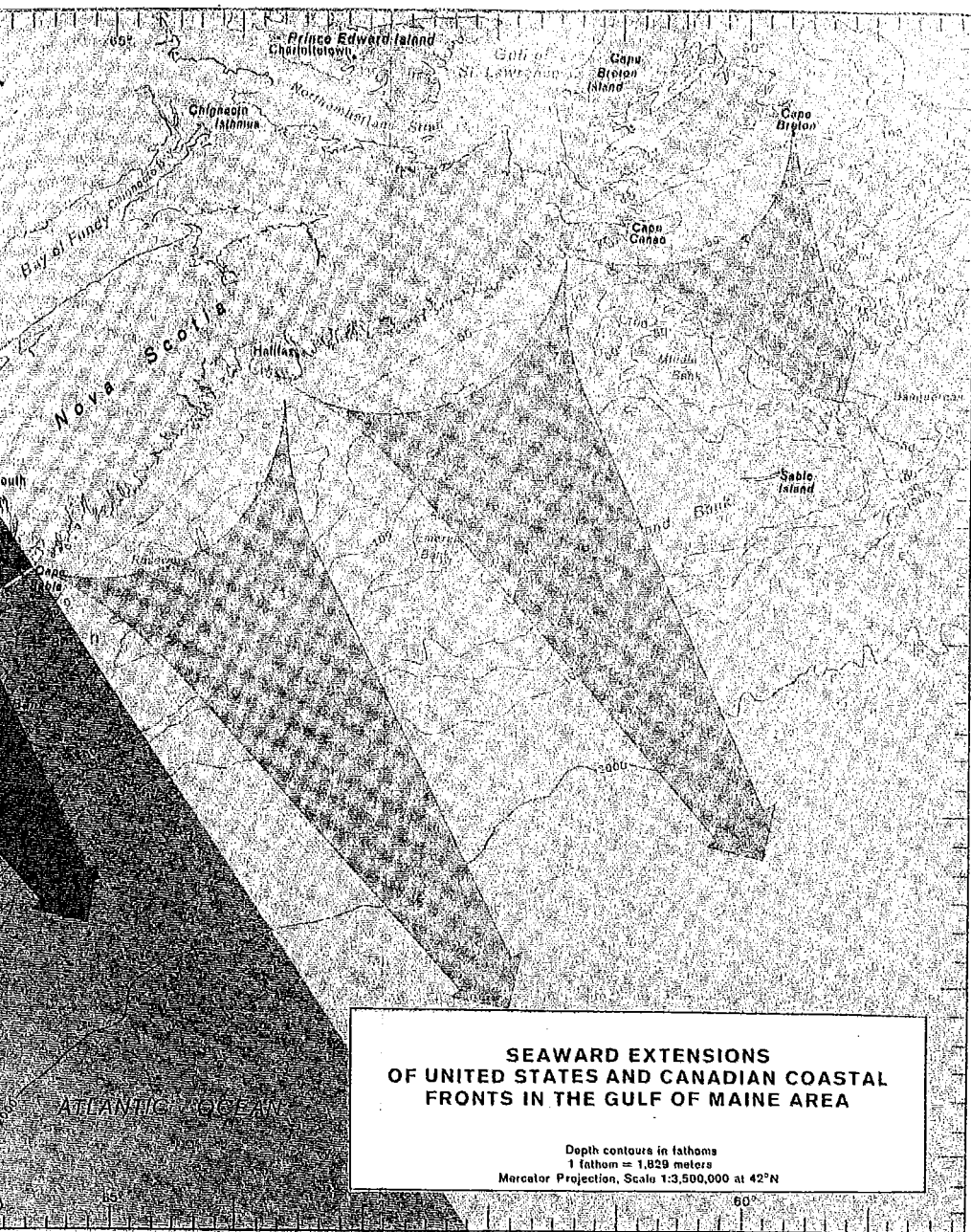
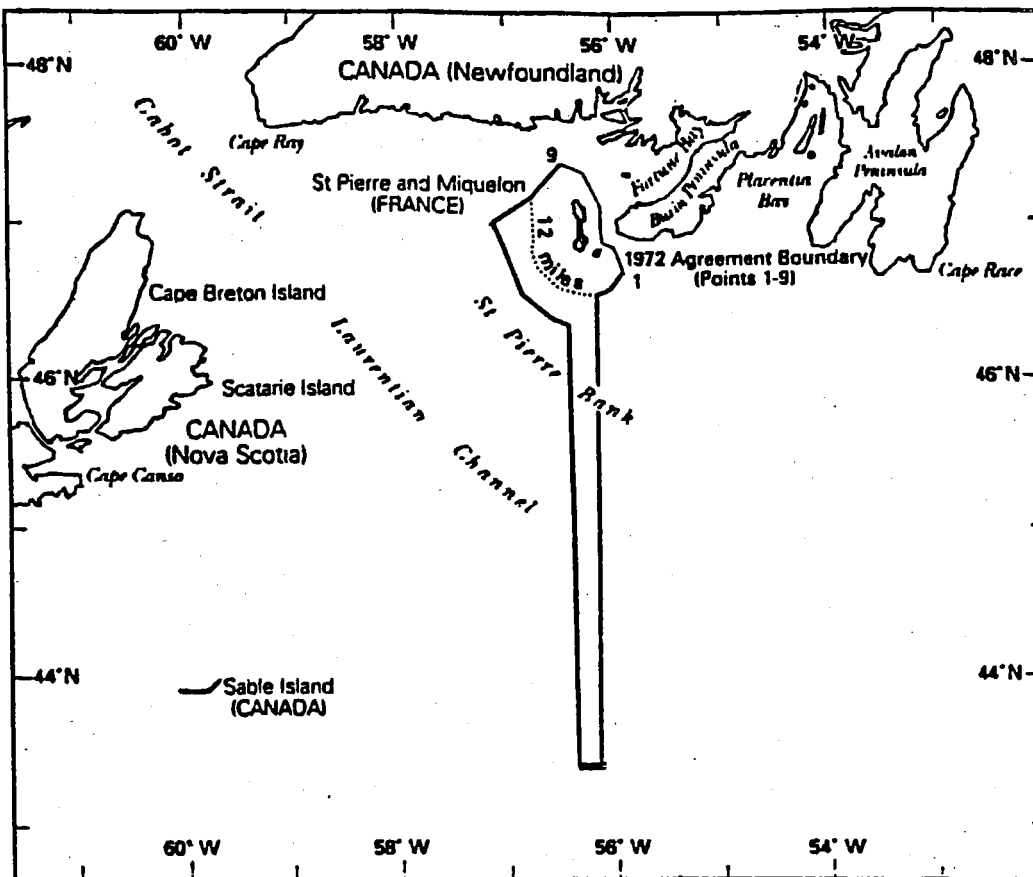
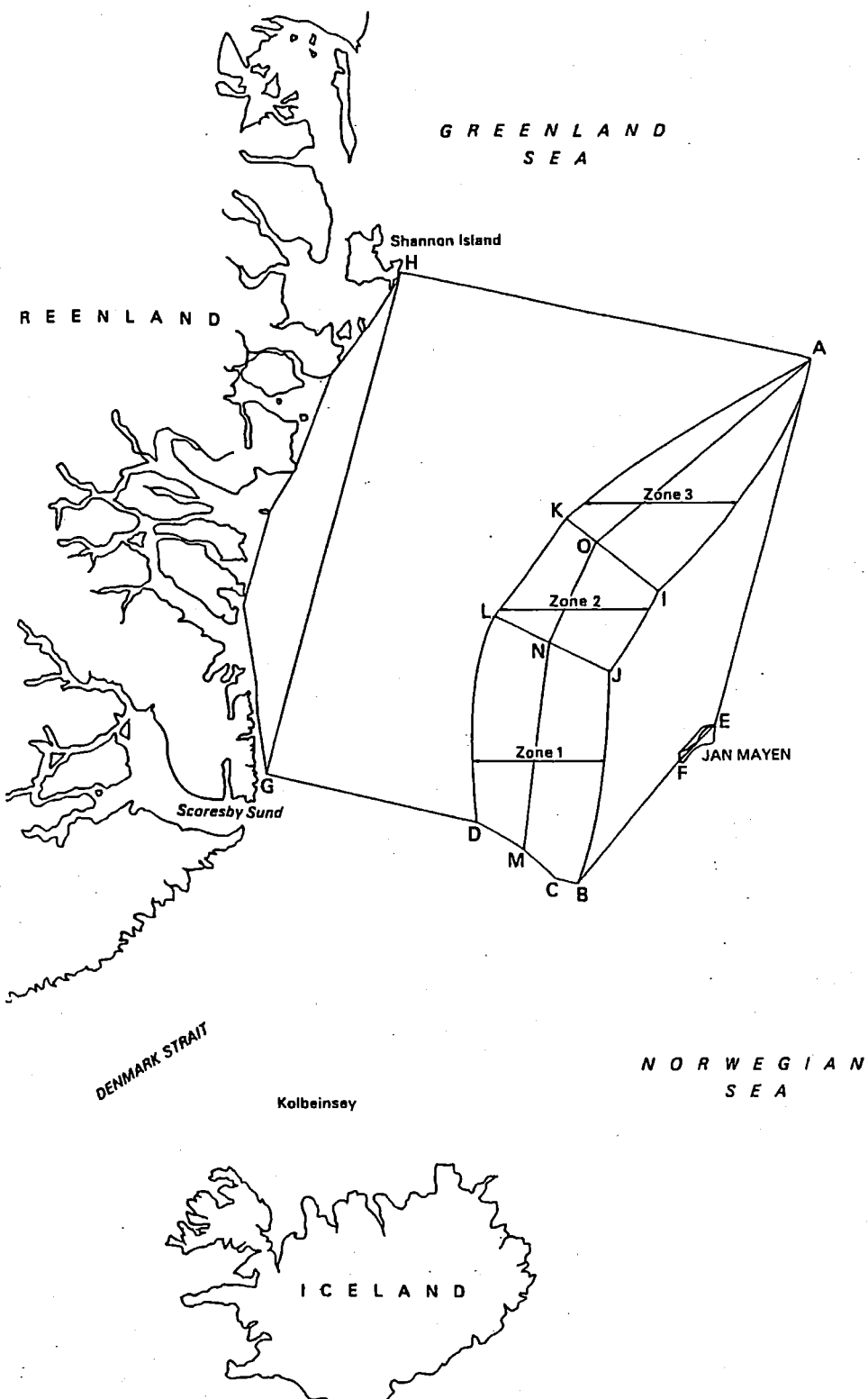


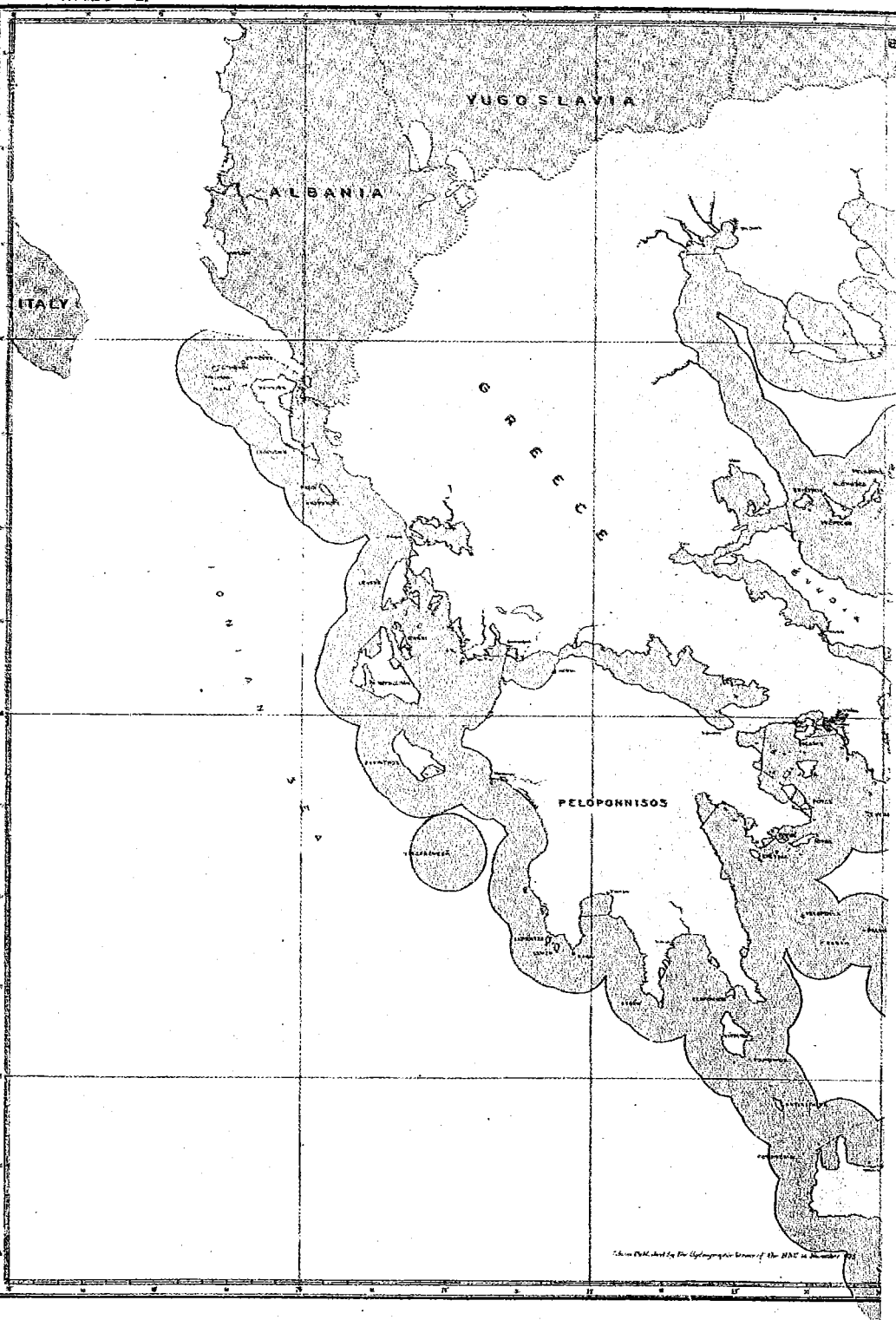
Figure 31





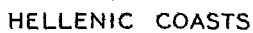






HELLENIC COASTS

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